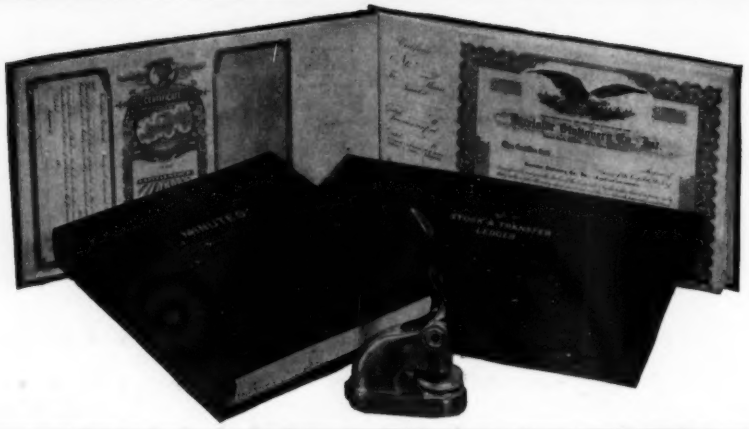
NOVEMBER 1968 • Volume 54 • Number 11

American Bar Association

JOURNAL

COMPLETE CORPORATE OUTFITS



SEND FOR COMPLETE CATALOG

Outfit No. 21
$15.00
Illustrated

OUTFIT $15.00
No. 21 Black Set

3 Ring Minute Book, 50 Blank Sheets
Book of 25 Litho Certificates Name and Capitalization Printed
Stock & Transfer Ledger, Corporate Desk Seal
Durable Cardboard Box

No. 22 Same Set with Printed Minutes and By Laws.....**$16.00**

OUTFIT $16.00
No. 1 Black and Red Set

3 Ring Minute Book, 50 Blank Sheets
Book of 25 Litho Certificates Name and Capitalization Printed
Stock & Transfer Ledger, Corporate Desk Seal
Durable Cardboard Box

No. 2 Same Set with Printed Minutes and By Laws.....**$17.00**

OUTFIT $19.00
No. 3 Black and Red Set

3 Ring Metal-Hinged Minute Book, 100 Blank Sheets
Book of 25 Litho Certificates Name and Capitalization Printed
Stock & Transfer Ledger, Corporate Desk Seal
Durable Cardboard Box

No. 4b Same Set with Printed Minutes and By Laws.....**$20.00**

OUTFIT $21.00
No. 5 Black and Red Set

Heavy Rod Style Minute Book, 100 Blank Sheets
Book of 25 Litho Certificates Name and Capitalization Printed
Stock & Transfer Ledger, Corporate Desk Seal
Durable Cardboard Box

No. 6 Same Set with Printed Minutes and By Laws.....**$23.00**

OPTIONAL EXTRAS—

Gold Letter name on all 3 books	extra $1.00
Pocket Seal instead of Desk Seal	extra 1.25
Steel File, Pull-Drawer Style B or Hinged Lid Style A instead of Cardboard	extra 5.75
Brown Cloth Drawer File instead of Cardboard	extra 2.00

Additional Certificates—7 cents each.

BOND REGISTERS

Bond Registers, bound black cloth, red back and corners, indexed in front of book A-Z.

100 name bond register...	$ 6.25
200 name bond register...	8.00
300 name bond register...	10.00
500 name bond register...	12.50

BONDS

Consult us—we can aid you with specimens of various types of Debentures —
50 Bonds.....$40.00 and up

POCKET SEAL $7.25

SPECIAL CERTIFICATES

Preference clauses, etc., under 200 words, 1 or 2 classes stock, 50 certificates apportioned amongst classes—Ordered without complete outfit $18.50. With complete outfit, add to price of outfit $12.00. Add $1.50 for each 100 words or fraction over 200. Each additional class $2.00. Addit. certificates 8c.

WHEN ORDERING

(Postage prepaid if remittance is sent with order)

Print Corporate Name exactly as on Certificate of Incorporation. Give *State* and *Year* of incorporation; No. of shares..... Par Value $..... Capital Stock $..... If stock is without par value specify total amount of Shares..... Is stock Full Paid and Non-assessable?..... Certificates signed by President and.....?

.....Our new idea for a complete outfit in 1 book....NOW AVAILABLE

CORP-KIT

"CORP-KIT" CONTAINS: • 20 CERTIFICATES • MINUTE SHEETS • TRANSFER SHEETS • INDEX
• SUPPLIED IN ATTRACTIVE SLIP-CASE—SEAL INDIVIDUALLY BOXED

SELECT MINUTE BOOK FROM ABOVE OUTFITS—PRICES SIMILAR TO OUTFITS
CATALOG ON REQUEST—SEE OCTOBER AND MONTHLY ADS ON THIS PAGE

Speed **REGULAR OUTFITS, "CORP-KITS," RUSHED TO YOU BY MAIL ON SAME BUSINESS DAY ORDER IS RECEIVED**
(Specially Printed Certificates Require More Time)

Excelsior Stationery Co.
43 Park Place, New York 7, N. Y.
BEekman 3-3037

Table of Contents

November, 1958

THE AMERICAN BAR ASSOCIATION JOURNAL is published monthly by the AMERICAN BAR ASSOCIATION at 1155 East 60th Street, Chicago 37, Illinois.
Second class postage paid at Chicago, Illinois.
Price per copy, 75c; to Members, 50c; per year, $5.00; to Members, $2.50; to Students in Law Schools, $3.00;
to Members of the American Law Student Association, $1.50.
Vol. 44, No. 11. Changes of address must reach the JOURNAL office five weeks in advance of the next issue date. Be sure to give both old and new addresses.

POSTMASTER: Send notices by Form 3579 to AMERICAN BAR ASSOCIATION, 1155 East 60th Street, Chicago 37, Illinois.

The President's Page

Ross L. Malone

The Outstanding New England Regional Meeting . . . The Continuing Legal Education Institute at Portland . . . The National Conference on Continuing Legal Education

The Outstanding New England Regional Meeting

The New England Regional Meeting of the American Bar Association which was held at Portland, Maine, on October 1 to 4, 1958, under the co-chairmanship of David A. Nichols, of Camden, Maine, and Robinson Verrill, of Portland, Maine, was one of the finest regional meetings in the history of the Association. The registration exceeded the most optimistic hopes of those who planned the meeting.

The Assembly Program, which included Thomas E. Dewey as the banquet speaker, Lawrence E. Walsh, Deputy Attorney General of the United States, as luncheon speaker, and the noted biographer, Catherine Drinker Bowen, on the opening program, was outstanding and was enthusiastically received. The presence of Walter S. Owen, Q. C., President of The Canadian Bar Association, who extended greetings of that Association at the banquet, emphasized the international aspects of the meeting, which was attended by a number of Canadian lawyers. The workshops and institutes, each of which was especially designed to meet the needs of lawyers in the New England area, were presented to "SRO" audiences and stimulated greater interest than I have ever observed at a regional meeting. The entertainment features, which included a traditional Maine lobster dinner, were most enjoyable. The crowning success of the meeting was the representative group of lawyers from throughout New England who attended and participated enthusiastically in the entire program.

All who had any part in this regional meeting can take satisfaction in the fact that it will be recorded in the history of the American Bar Association as one of the finest such meetings that has ever been held. To each of you whose effort and participation in the meeting made possible its success, and particularly to David Nichols, Robinson Verrill and Lewis F. Powell, Jr., Chairman of our Standing Committee on Regional Meetings, I express my personal appreciation and that of the American Bar Association.

The Continuing Legal Education Institute at Portland

In my first President's Page, I suggested that we are entering a new era in continuing legal education and mentioned plans for a major expansion of the program for the continued education of practicing lawyers throughout the country. I am glad to be able to report progress toward this objective.

The reconstitution of the Joint Committee of the American Law Institute and the American Bar Association on Continuing Legal Education has been effected. The Committee is now composed of seven members from the American Law Institute and seven members from the American Bar Association. The presidents of the two organizations are *ex officio* members of the Joint Committee. The seven members of the Joint Committee who represent the American Bar Association compose the Special Committee of the American Bar Association on Continuing Legal Education. This Committee, under the chairmanship of Walter E. Craig, of Phoenix, Arizona, will be responsible for the independent activity of the Association in this field as well as for the activities which will be carried out jointly with the American Law Institute.

The first program sponsored by the newly constituted Joint Committee was presented as a part of the New England Regional Meeting at Portland. It was a "How-To-Do-It" Institute for state and local bar association officials on the planning and presentation of an effective program of continuing legal education. The attendance was excellent. The speakers composing the panel which presented the program were assembled from over the United States because of their unusual experience in the field of continuing legal education. They were: Felix F. Stumpf, Administrator of the Continuing Education of the Bar Program of the State of California; August G. Eckhardt, Director of the joint program carried out by the State Bar of Wisconsin and the University of Wisconsin; A. James Casner, of the Harvard University faculty, who directs the post-admission education program of Harvard University; and John E. Mulder, long-time Director of the Continuing Legal Education Program sponsored by the American Law Institute and the American Bar Association through the "ALI-ABA" Committee.

The California program of continuing legal education is generally recognized as the most comprehensive and effective state program conducted in the United States today. It is sponsored

by the State Bar of California. An Advisory Committee composed of the Deans of the accredited law schools in the state confers with the State Bar Committee on program planning. The actual organization, preparation and presentation of programs is the responsibility of the Extension Division of the University of California under the terms of the agreement between the State Bar and the Extension Division of the University. The lawyer population of California, which is approximately 19,000, makes possible a more elaborate program than can be undertaken by many less populous states. Nonetheless, it was pointed out at Portland that the program in California is taken to many small communities having as few as twenty-five lawyers, some of which are as isolated from the centers of population as those to be found in any section of New England.

The experience in California has established definitely that a well-staffed -planned and -conducted program of continuing legal education can be a profitable venture. More than 13,000 California lawyers registered at institutes conducted in that state during the past year. The income from the California program during the past year amounted to some $264,000 and was considerably in excess of the expense of the program.

In Wisconsin a joint program is conducted by the State Bar of Wisconsin and the University Extension Division, in addition to independent institutes sponsored by each agency. The joint program encompasses the major effort and has proved an excellent means of expanding continuing legal education in that state. The importance of professional staff direction has been recognized, and August G. Eckhardt of the law faculty, who is the Director, is assigned by the law school on a half-time basis.

The Wisconsin Extension Division has made unusual progress in the presentation of courses consisting of six sessions of two hours each presented bi-weekly. This type of instruction is in its infancy as a part of continuing legal education.

Both the California and Wisconsin programs are far ahead of most states and provide valuable sources of experience in the contemplated national expansion of continuing legal education.

It seems apparent from the experience in California, Wisconsin and other advanced states that professional staff direction is highly desirable, if not essential, for a successful comprehensive program of continuing legal education. This is particularly true if it is to be conducted on a statewide basis, which is essential for any adequate program. It is equally apparent that small states, such as most of those included in the New England Regional Meeting, cannot afford the full-time services of a staff director. Most states do have a law school which would be glad to participate in the program and which could provide a law professor to act as staff director on a part-time basis, as is done in Wisconsin.

The discussion which followed the panel presentation at Portland developed the suggestion that the New England states whose lawyer population could not support an individual staff director might combine to establish a staff which would service the participating states. Such a staff would administer programs initiated and controlled by the Bar of each participating state.

The interest in this possibility generated by the Institute at Portland provides reason to hope that out of that meeting there may evolve state programs of continuing legal education in New England far surpassing anything that has been envisioned heretofore. Certainly there has been created a greater interest in the possibilities of such a program than has existed previously. Those of us responsible for the Portland Institute will watch the developments in New England with much interest.

The National Conference on Continuing Legal Education

The National Conference on Continuing Legal Education, envisioned as a major step in the expansion of continuing legal education in the United States, will be held at Arden House, near New York City, December 16 to 19, 1958. It will be held under the auspices of the Joint Committee of the American Law Institute and the American Bar Association and will be financed through the generosity of the Fund for Adult Education, set up by the Ford Foundation, which has made a grant to the American Law Institute and American Bar Association for this purpose.

This is to be a working conference of qualified lawyers interested and experienced in the field of post-admission education of the Bar. Arden House is the old Harriman mansion which was given to Columbia University and has been the scene of many notable conferences of the type which we contemplate. Its facilities are ideal for the purpose.

The accommodations available will limit the attendance to a maximum of 125 lawyers. Invitations will be issued to at least one representative of the bar association of each state and of the major city associations represented in the House of Delegates of the American Bar Association. In addition, selected representatives of typical law schools with experience in continuing legal education will be invited, as well as a representative of the Junior Bar Conference and of the Canadian Bar Association. Invitations also will be extended to a number of lawyers from throughout the United States selected for their special experience in the continuing legal education field. We thus hope that the National Conference will have the benefit of substantially all of the experience and "know-how" in continuing legal education in this country today.

Those in attendance at Arden House will devote three days to: (a) an analysis of the continuing legal education program in the country as it exists at the present time; (b) the formulation of the program to be carried out by the legal profession in the new era which we envision; and (c) the preparation of plans by which the new program will be carried out.

The Conference will give special attention to:

1. Methods of providing continuity in planning and programming;
2. The extent to which publication programs should be incorporated in continuing legal education programs;
3. The extent to which such subjects

(Continued on page 1089)

published monthly

American Bar Association Journal

the official organ of the American Bar Association

The objects of the American Bar Association, a voluntary association of lawyers of the United States, are to uphold and defend the Constitution of the United States and maintain representative government; to advance the science of jurisprudence; to promote the administration of justice and the uniformity of legislation and of judicial decisions throughout the nation; to uphold the honor of the profession of law; to apply its knowledge and experience in the field of the law to the promotion of the public good; to encourage cordial intercourse among the members of the American Bar; and to correlate and promote such activities of the bar organizations in the nation and in the respective states as are within these objects, in the interest of the legal profession and of the public. Through representation of state, territory and local bar associations in the House of Delegates of the Association, as well as large membership from the Bar of each state and territory, the Association endeavors to reflect so far as possible, the objectives of the organized Bar of the United States.

There are eighteen Sections for carrying on the work of the Association, each within the jurisdiction defined by its by-laws, as follows: Administrative Law; Antitrust Law; Bar Activities; Corporation, Banking and Business Law; Criminal Law; Family Law; Insurance, Negligence and Compensation Law; International and Comparative Law; Judicial Administration; Labor Relations Law; Legal Education and Admissions to the Bar; Mineral and Natural Resources Law; Municipal Law; Patent, Trademark and Copyright Law; Public Utility Law; Real Property, Probate and Trust Law; Taxation; and the Junior Bar Conference. Some issue special publications in their respective fields. Membership in the Junior Bar Conference is limited to members of the Association under the age of 36, who are automatically enrolled therein upon their election to membership in the Association. All members of the Association are eligible for membership in any of the other Sections.

Any person who is a member in good standing of the Bar of any state or territory of the United States, or of any of the territorial groups, or of any federal, state or territorial court of record, is eligible to membership in the Association on endorsement, nomination and election. Applications for membership require the endorsement and nomination by a member of the Association in good standing. All nominations made pursuant to these provisions are reported to the Board of Governors for election. The Board of Governors may make such investigation concerning the qualifications of an applicant as it shall deem necessary. Four negative votes in the Board of Governors prevent an applicant's election.

Dues are $16.00 a year, except that for the first two years after an applicant's admission to the Bar, the dues are $4.00 per year, and for three years thereafter $8.00 per year, each of which includes the subscription price of the JOURNAL. There are no additional dues for membership in the Junior Bar Conference or the Section of Legal Education and Admissions to the Bar. Dues for the other Sections are as follows: Administrative Law, $5.00; Antitrust Law, $5.00; Bar Activities, $2.00; Corporation, Banking and Business Law, $5.00; Criminal Law, $2.00; Family Law, $5.00; Insurance, Negligence and Compensation Law, $5.00; International and Comparative Law, $5.00; Judicial Administration, $3.00; Labor Relations Law, $6.00; Mineral and Natural Resources Law, $7.00; Municipal Law, $3.00; Patent, Trademark and Copyright Law, $5.00; Public Utility Law, $3.00; Real Property, Probate and Trust Law, $5.00; Taxation, $6.00.

Blank forms of proposal for membership may be obtained from the Association offices at 1155 East 60th Street, Chicago 37, Illinois. An application for membership should be accompanied by a check for dues in the appropriate amount as follows: $16.00 for lawyers first admitted to the Bar in 1953 or before; $8.00 for lawyers admitted between 1954 and 1956; and $4.00 for lawyers admitted in 1957 or later.

Manuscripts for the Journal

■ The JOURNAL is glad to receive from its readers any manuscript, material or suggestions of items for publication. With our limited space, we can publish only a few of those submitted, but every article we receive is considered carefully by members of the Board of Editors. Articles in excess of 3000 words, including footnotes, cannot ordinarily be published.

Manuscripts submitted must be typewritten originals (not carbon copies) and must be double or triple spaced, including footnotes and any quoted matter. The Board of Editors will be forced to return unread any manuscript that does not meet these requirements.

Manuscripts are submitted at the sender's risk and the Board assumes no responsibility for the return of material. Material accepted for publication becomes the property of the American Bar Association. No compensation is made for articles published and no article will be considered which has been accepted or published by any other publication.

American Bar Association

HEADQUARTERS OFFICE:
1155 EAST 60th STREET, CHICAGO 37, ILLINOIS.
Telephone: HYde Park 3-0533
WASHINGTON OFFICE:
1025 CONNECTICUT AVENUE, N. W., WASHINGTON 6, D. C.
Telephone: MEtropolitan 8-6124

Officers and Board of Governors 1958-59

President ROSS L. MALONE, Roswell Petroleum Building, Roswell, New Mexico
Chairman, House of Delegates SYLVESTER C. SMITH, JR., 18 Bank Street, Newark 1, New Jersey
Secretary JOSEPH D. CALHOUN, 218 West Front Street, Media, Pennsylvania
Treasurer HAROLD H. BREDELL, 920 Circle Tower, Indianapolis 4, Indiana
Executive Director JOSEPH D. STECHER, 1155 East 60th Street, Chicago 37, Illinois
Assistant Secretary RICHARD H. BOWERMAN, 205 Church Street, Box 1936, New Haven 9, Connecticut

Ex Officio
- The President,
- The Chairman of the House of Delegates,
- The Secretary,
- The Treasurer,
- CHARLES S. RHYNE, *Last Retiring President*, 839 17th Street, N.W., Washington 6, D.C.
- TAPPAN GREGORY, Editor-in-Chief, *American Bar Association Journal*, 105 South LaSalle Street, Chicago 3, Illinois

First Circuit	WILLOUGHBY A. COLBY, 18 School Street, Concord, New Hampshire	*Sixth Circuit*	GLENN M. COULTER, Ford Building, Detroit 26, Michigan
Second Circuit	WHITNEY NORTH SEYMOUR, 120 Broadway, New York 5, New York	*Seventh Circuit*	GEORGE S. GEFFS, Jackman Building, Janesville, Wisconsin
Third Circuit	ROBERT K. BELL, 801 Asbury Avenue, Ocean City, New Jersey	*Eighth Circuit*	RICHMOND C. COBURN, 411 North Seventh Street, St. Louis 1, Missouri
*Fourth Circuit**	DOUGLAS McKAY, Barringer Building, Columbia 1, South Carolina	*Ninth Circuit*	WALTER E. CRAIG, First National Bank Building, Phoenix, Arizona
Fifth Circuit	E. DIXIE BEGGS, Brent Annex, Box 1030, Pensacola, Florida	*Tenth Circuit*	FRANKLIN RITER, Kearns Building, Salt Lake City 1, Utah

**The District of Columbia Circuit is considered a part of the Fourth Circuit for the purposes of the Board of Governors.*

Board of Editors, American Bar Association Journal, listed on page 1070.

Advisory Board of the Journal

Alabama	WILLIAM LOGAN MARTIN, Birmingham
Alaska	R. E. ROBERTSON, Juneau
Arkansas	EDWIN L. WRIGHT, Little Rock
California	JAMES E. BRENNER, Stanford
Colorado	ORIE L. PHILLIPS, Denver
Connecticut	CHARLES W. PETTENGILL, Greenwich
Delaware	JOHN BIGGS, JR., Wilmington
Florida	J. LANCE LAZONBY, Gainesville
Georgia	CHARLES J. BLOCH, Macon
Idaho	A. L. MERRILL, Pocatello
Illinois	JOHN A. DIENNER, Chicago
Indiana	RICHARD P. TINKHAM, Hammond
Iowa	JOHN D. RANDALL, Cedar Rapids
Kansas	W. D. P. CAREY, Hutchinson
Kentucky	ROBERT P. HOBSON, Louisville
Louisiana	LEDOUX R. PROVOSTY, Alexandria
Maine	DAVID A. NICHOLS, Portland
Maryland	EMORY H. NILES, Baltimore
Massachusetts	FRANK W. GRINNELL, Boston
Michigan	WILLIAM T. GOSSETT, Dearborn
Minnesota	HENRY C. MACKALL, Minneapolis
Mississippi	GIBSON B. WITHERSPOON, Meridian
Missouri	JACOB M. LASHLY, St. Louis
Montana	ARTHUR F. LAMEY, Billings
Nebraska	ROBERT G. SIMMONS, Lincoln
Nevada	JOHN W. BONNER, Las Vegas
New Hampshire	WILLOUGHBY A. COLBY, Concord
New Jersey	NICHOLAS CONOVER ENGLISH, JR., Newark
New Mexico	CHARLES F. MALONE, Roswell
New York	ORISON S. MARDEN, New York
North Carolina	MAURICE T. VAN HECKE, Chapel Hill
North Dakota	FLOYD B. SPERRY, Golden Valley
Ohio	RALPH WILKINS, Columbus
Oklahoma	ALFRED P. MURRAH, Oklahoma City
Oregon	JAMES C. DEZENDORF, Portland
Pennsylvania	JOHN G. BUCHANAN, Pittsburgh
Rhode Island	HENRY C. HART, Providence
South Carolina	WALTON J. McLEOD, JR., Walterboro
South Dakota	ALLEN L. AUSTIN, Watertown
Tennessee	WALTER P. ARMSTRONG, JR., Memphis
Texas	DILLON ANDERSON, Houston
Utah	FRANKLIN RITER, Salt Lake City
Vermont	DEANE C. DAVIS, Montpelier
Virginia	T. MUNFORD BOYD, Charlottesville
Washington	JOSEPH H. GORDON, Tacoma
West Virginia	ROLLA D. CAMPBELL, Huntington
Wisconsin	CARL B. RIX, Milwaukee
Wyoming	FRANK E. HAYES, Lander

Views of Our Readers

■ Members of our Association are invited to submit short communications expressing their opinions, or giving information, as to any matter appearing in the Journal or otherwise, within the province of our Association. Statements which do not exceed 300 words will be most suitable. The Board of Editors reserves to itself the right to select the communications or excerpts therefrom which it will publish and to reject others. The Board is not responsible for matters stated or views expressed in any communication.

The First Mr. Justice Harlan on School Segregation

I have just read in the July, 1958, issue of the American Bar Association Journal a letter from Mr. Ralph T. Catterell of Richmond, Virginia (44 A.B.A.J. 610), entitled "The Fable of *Plessy* v. *Ferguson?*" That the first Mr. Justice Harlan was not a prophet who opposed segregation in public schools is further demonstrated by his opinion in *Cumming* v. *Richmond County Board of Education*, 175 U.S. 528, decided December 18, 1899, just three years after *Plessy* v. *Ferguson*, where he said at page 544:

> The substantial relief asked is an injunction that would either impair the efficiency of the high school provided for white children or compel the Board to close it. But if that were done, the result would only be to take from white children educational privileges enjoyed by them, without giving to colored children additional opportunities for the education furnished in high schools. The colored school children of the county would not be advanced in the matter of their education by a decree compelling the defendant Board to cease giving support to a high school for white children.

And at page 545, he said:

> We may add that while all admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the education of the people in schools maintained by state taxation is a matter belonging to the respective States, and any interference on the part of Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land.

CHARLES J. BLOCH

Macon, Georgia

A "Blunder" To Use Troops To Enforce Decrees

As a liberal Southerner, I have read, with keen interest, the articles by Messrs. Schweppe and Schmetterer, in the February and August issues of the JOURNAL, on the legal aspects of the use of troops by the Executive to enforce the Little Rock integration decree.

Mr. Schmetterer is unquestionably entitled to great credit for his courage in entering the lists, as a tyro, against so experienced, proved and formidable an adversary as Mr. Schweppe.

But Mr. Schmetterer's admirable intrepidity does not save him from defeat in such an encounter with Mr. Schweppe's brilliant advocacy.

The question as to whether a marshal's *posse comitatus* could cope physically with threatened mob defiance of judicial mandate is not relevant to a determination of the issue as to absence of statutory sanction for executive substitution of military force for judicial process.

It is difficult to understand the basis, in law or in logic, on which it is contended that the express repeal, by the Civil Rights Act of 1957, of Section 1989 of the Revised Statutes, did not carry with it repeal as well of 10 U.S.C. 332 and 333, which tend to exactly the same effect on R.S. 1989.

Courts should enforce their own decrees. There is no reason why, if necessary, the members of a military detachment should not be made deputy marshals; nor why violations of orders of court should not be punished as contempt in the orderly course of judicial procedure.

The blunder of attempting enforcement of the decree of the United States District Court for the Eastern District of Arkansas by executive fiat through the use of military force was responsible for the re-election of Orval Faubus as governor of that state.

Perhaps time will mature the judgment which induced the gubernatorial election in Arkansas.

Perhaps, too, maturity of judgment will bring into proper focus the distorted concept of the law which condones the presidential error at Little Rock.

EBERHARD P. DEUTSCH

New Orleans, Louisiana

Use Federal Agencies Instead of the Army

The controversy stirred up by the President's use of federal troops in Little Rock, together with the decision of the Circuit Court on the Little Rock School Board's petition for a delay in integration, ably discussed by Mr. Schweppe in the February issue and by Mr. Schmetterer in the August issue of the JOURNAL moves me to suggest a possible alternative solution.

On the one hand it is indisputable that the mandate of the Court must be enforced; on the other hand the use of federal troops causes considerable objection, and the use of an *ad hoc posse comitatus* may not be effective.

The Federal Government, however, includes many different agencies whose members possess the necessary investigative and law-enforcement training. If individuals employed by these agencies were assigned, in small groups, to the United States Marshal responsible for the area, to be sworn in by him individually as deputies, a force of sufficient size might well be gathered, without concentrating the objections against any one agency. The agencies and portions thereof I have in mind include the following:

State Department: Office of Security.

Treasury Department: Customs per-

(Continued on page 1030)

Good earnings for the telephone company have a way of being good for the customer, too

Everybody has problems. One of ours is the rather widespread belief that the sure way to low telephone rates is to keep the company's earnings as low as possible.

Attractive as this may seem at the moment, it has distinct hazards for the telephone user. Handcuffing the company limits progress and long-range economies, and will lead to poorer service at a higher price than the customer would otherwise have to pay.

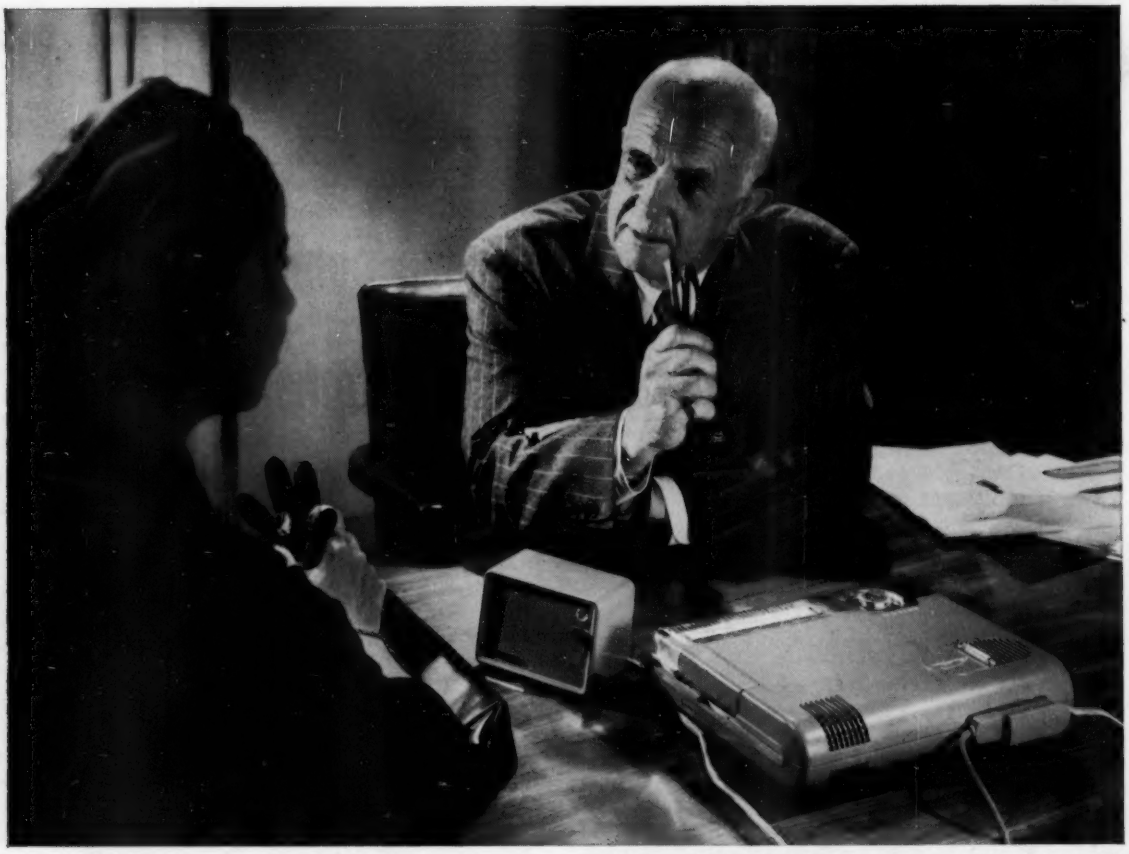
This fact is receiving increasing recognition by the commissions which regulate telephone rates and earnings. But it is not something that concerns the commissions alone. It needs your understanding, too.

Regulation can only work best in the interest of all when it is free to act in the interest of all on the basis of economic facts.

Authorizing good earnings for the telephone company requires wisdom and foresight and sometimes calls for a high degree of political courage. Such action, however, in the long run will return the greatest value to the public.

Fortunately, from the standpoint of the individual telephone user, our increased rate needs, where required, are small. They usually come to not more than a few cents a day on the average customer's bill.

BELL TELEPHONE SYSTEM



Leading attorneys throughout the country are putting "new hours" in their workdays with Edison Voicewriter dictation.

Star "witness" . . .

the Voicewriter recalls all the facts with perfect accuracy

Nothing escapes the memory of an Edison Voicewriter . . . and it's ready at any time of day or night to record the spoken statement of a client or witness, or your dictated report covering such confidential interviews. To get the reports on paper . . . just turn the Voicewriter Diamond Disc over to your secretary for speedy and error-free transcription.

But there are many more ways the Voicewriter can prove indispensable . . . whether you're in general practice or no matter what your specialty might be. If you're out of the office all day in court . . . or at client meetings . . . you can quickly catch up with correspondence, memoranda and briefs during off-hours. Dictate to your Voicewriter at the office or at home . . . no need to have your secretary present. Just give her the Voicewriter Diamond Disc and you're free for other work.

You'll find the Voicewriter a big help in preparing pleadings, too. It pauses when you do . . . yet costs you nothing to keep it waiting. Use it to outline speeches, record minutes of meetings . . . and clean up paper work for the many other outside activities in which every busy lawyer must participate. Use it even as a "fee memory," for billing purposes, to record the time you devote to each client.

Let us prove there's nothing like Voicewriter dictation!

Your Edison representative will arrange to let you try a Voicewriter and see *real* dictating equipment in action . . . and so easy to own on the Edison lease plan for only $17.81 a month. To have him contact you—or for free literature—write Dept. AJ-11 at the address below.

Edison Voicewriter • a product of Thomas A. Edison Industries

Thomas A. Edison Industries, West Orange, N. J.——In Canada: 32 Front Street W., Toronto, Ontario

McGRAW EDISON

THE FACULTY OF THE HARVARD LAW SCHOOL

is pleased to announce a

PROGRAM OF INSTRUCTION FOR LAWYERS

to be given at the

Harvard Law School, Cambridge, Massachusetts

July 20 to July 31, 1959

PROGRAM OF INSTRUCTION AND FACULTY

(All courses will be presented by Members of the Faculty of the Harvard Law School)

A. James Casner, Director of the Program

ANTITRUST PROBLEMS IN MERGERS AND DISTRIBUTION (seminar)	Donald F. Turner, *Professor of Law*
COMPARISON OF AMERICAN AND SOVIET LAW	Harold J. Berman, *Professor of Law*
CURRENT PROBLEMS IN SECURITIES REGULATION (seminar)	Louis Loss, *Professor of Law*
THE DRAFTING AND INTERPRETATION OF STATUTES	Albert M. Sacks, *Professor of Law*
ESTATE PLANNING	A. James Casner, *Weld Professor of Law*
INCOME TAXATION AND CORPORATE ENTERPRISE	Ernest J. Brown, *Professor of Law*
INTERRELATIONS OF STATE AND FEDERAL LAW	Henry M. Hart, Jr., *Charles Stebbins Fairchild Professor of Law*
JURISPRUDENCE—AN INTRODUCTION TO LEGAL PHILOSOPHY	Lon L. Fuller, *Carter Professor of General Jurisprudence*
LABOR LAW	Archibald Cox, *Royall Professor of Law*
PROTECTION UNDER INTERNATIONAL LAW OF AMERICANS AND THEIR PROPERTY ABROAD (seminar)	Richard R. Baxter, *Assistant Professor of Law*
TAX ASPECTS OF REAL ESTATE TRANSACTIONS (seminar)	David Westfall, *Professor of Law*
TAXATION OF INTERNATIONAL TRADE AND INVESTMENT	Stanley S. Surrey, *Jeremiah Smith, Jr., Professor of Law*

Each course and seminar will run throughout the two weeks of the Program.

Anyone who is a member of the Bar is invited to apply for registration.

Accommodations and meals will be available in University buildings for those attending the Program and their families.

For a catalog and application material, write to:

William L. Bruce, Associate Director
Program of Instruction for Lawyers
Harvard Law School
Cambridge 38, Massachusetts

(Continued from page 1024)

sonnel; Internal Revenue personnel; narcotics agents; United States secret service; alcohol tax unit.

Department of Justice: Federal Bureau of Investigation; Immigration and Naturalization Service; Bureau of Prisons Custodial personnel.

Post Office Department: Postal Inspectors.

Department of Commerce: Civil Aeronautics Administration personnel; Bureau of Foreign Commerce personnel.

Federal Civil Defense Administration: Auxiliary Police personnel.

General Services Administration: Guard and Custodial forces.

Veterans Administration: Security Service.

Atomic Energy Commission: Security Division, guard and custodial personnel.

District of Columbia government: Personnel from the various police forces.

In view of the generally high calibre of the personnel of the agencies listed, it would seem that a composite civilian force of deputies so selected could function effectively even if significantly smaller than the number of troops hitherto used. Being civilian, they would be less conspicuous and would not require the messing and billeting facilities which the troops needed.

FRANK E. G. WEIL
New York, New York

The Court Has "Seized Congressional Power"

The article in your August issue—"Construing the Constitution," by Wendell J. Brown, of Chicago—was well written. It emphasized the importance in construing a written constitution of adhering to the rules of construction. The most important rule was said to be—"a document must be read in its entirety".

Referring to the Supreme Court's decision of May 17, 1954, in the school case, Mr. Brown said, however, that the decision was correct. Perhaps Mr. Brown has never read the Fourteenth Amendment "in its entirety". If he had done so, he would have read Section 5 of the Fourteenth Amendment, which reads as follows: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

In the school case, the Supreme Court failed to follow the rules of construction, and made no mention of Section 5 of the Fourteenth Amendment. The result is the spectacle we have of our highest Court taking part in the management of schools, which is a legal and constitutional absurdity.

The Court's brazen seizure of congressional power is something that will not be suffered.

WALTER H. BUCK
Baltimore, Maryland

Congress and Legislators Left Out by the Court

"The Court sits in judgment . . . on the views of the direct representatives of the people in meeting the needs of society, on the views of Presidents and Governors. . . ." Frankfurter, *The Supreme Court in the Mirror of Justices*, 44 A.B.A.J. 802.

(Continued on page 1032)

(Continued from page 1030)

Where does this leave Congress, the President, governors and legislators in relation to the Court?

WILLIAM P. ROBERTS
Springfield, Illinois

The Court Is Floundering Like a Rudderless Ship

I have just read with much interest "The Supreme Court in the Mirror of Justices" by Mr. Justice Felix Frankfurter (44 A.B.A.J. 723).

He is entirely correct in his conclusion that a judge rather than a lawyer will not necessarily make a good Supreme Court Justice.

It is the man that makes a good judge of the Supreme Court—a man of character; of ability with a respect for the work of his predecessors; and who understands and adheres to the oath which Article VI of the Constitution requires him to take "to support the Constitution".

I would say that the most important thing for a Supreme Court Justice to know is the rule of *stare decisis*; and a great judge should be a student of Cooley's *Constitutional Limitations*.

Without the application of the rule of *stare decisis* in the determination of legal issues the law becomes anarchy.

And that is just what the recent decisions of the Supreme Court—since 1936—have made of American constitutional law.

All of the great anchors of the past have been swept away and the Court is now floundering like a ship without a rudder; and we begin to wonder whether we have any Constitution other than what the Court by its strange and foreign concepts declares it to be.

LEON M. BAZILE
Ashland, Virginia

Things Are Up To Date in Kansas City, Mr. Keeffe

May I attempt to remove a misunderstanding which has led to some criticism of our school? I have delayed doing so for quite some time, feeling that *Gargantua* and *Pantagruel* might well be placed on a list of general reading for law students, al-

(Continued on page 1036)

(Continued from page 1032)

though the faculty at the University of Kansas City did not do so. There is perhaps particular justification for such a book for students of a non-national law school, who may be prone to just such provincial attitudes as Mr. Keeffe has displayed in sneering at it (44 A.B.A.J. 563).

Gargantua and *Pantagruel*, as well as a number of other classics of literature and a few recent works, are taken from a list developed for our infant "Classics for the Bar" program, through which we hope to encourage practicing lawyers to continue the "liberal" as well as the legal sides of their educations. We have already accumulated a nucleus of a book collection in this field—entirely through books which have been given to the Law Library, as this is too peripheral a project for our very limited cash funds. Many members of the local Bar are at least attempting to read these books, for they enjoy a steady circulation, entirely without promotion.

Our pre-law reading list, which we make a real effort to have every entering student complete, although it is in no way required, is very short: Meyer, *The American Legal System*; Vanderbilt, ed., *Studying Law*; selections from Hicks, *Materials and Methods of Legal Research*; and "at least one good legal biography". Prospective students who come to us in time to act on further suggestions are referred to the Harvard list; occasionally someone whose background and interests fit with a heavily philosophic list is referred to the Rutgers list, which is also recommended to students in the midst of their legal education.

Both of these lists were forwarded to Dr. Marke in case he should wish to make use of the "Classics for the Bar" list as well as that for pre-law students. He did, but I am afraid that the result has been somewhat misleading in this instance.

DOROTHY B. CLARKE
Law Library
University of Kansas City
Kansas City, Missouri

Another Problem in By Love Possessed

I have read with interest the article by Mr. Gould in the August JOURNAL regarding *By Love Possessed* and the questions of law involved in that book. There was one legal point on which Mr. Gould was silent. Winner was an officer of the court, appointed, on application of the McCarthy estate, to audit Tuttle's accounts of that estate. Winner now knows that Tuttle had sold some bonds belonging to the estate and had deposited the proceeds in his own bank account on which account there was an overdraft.

What kind of a report will Winner make to the court? And what will be the consequences if he makes a report that fails to give this information?

JOHN E. TRACY
University of Michigan
Ann Arbor, Michigan

He Liked the Article on By Love Possessed

This is to compliment the JOURNAL on the very ingenious and well written

article on *By Love Possessed*. A highly interesting commentary on a highly interesting book.

HERBERT F. GOODRICH
United States Court of Appeals
Philadelphia, Pennsylvania

By Love Possessed *Article Was Misleading*

I am greatly surprised by the approach, taken by Mr. Gould, in his review, "from the legal point of view", of Cozzens' *By Love Possessed*. He attempts to explain as a possible and excusable attitude what is ascribed in that novel to three fictional characters, not pictured as shyster lawyers but as attorneys of high standing. Actually, however, he grossly misconstrues the pertinent criminal law and presents as condonable under the given fictional circumstances attitudes that are flagrantly at variance with a correct understanding of the legal duties of attorneys acting as trustees and with fundamental principles of legal ethics. I hope that novices among the members of the Bar will not take a lesson from Mr. Gould's bona fide, but nevertheless unsound and misleading analysis. Irrespective of the question of literary value, which is to a great extent a matter of taste, and about which therefore "reasonable men may disagree", Mr. Cozzens' privilege to treat his subject in a manner divergent from the corresponding reality cannot be doubted. But no effort should have been made, and especially not by a distinguished member of the New York Bar, to endorse that fictional story with comments giving it the appearance of coming close to reality.

MAXIMILIAN KOESSLER
San Francisco, California

Plan Study of Metropolitan Problems

The Legislative Research Center of the University of Michigan Law School, under the directorship of Professor William J. Pierce, has recently undertaken a research project involving the legal questions encountered in solving metropolitan area problems. It might be of interest to your readers to learn something of our program.

The two-year study is being financed by the William W. Cook Fund for

Graduate Research. Four legislative analysts are at present working on monographs in the law of municipal corporations with particular reference to its application to metropolitan areas. Monographs have been started or are contemplated on topics including, among others: home rule, state supervision of municipalities, the English Town and Country Planning Act, annexation and other territorial changes, consolidation of governmental units, metropolitan districts and municipal finance.

The approach to the research (for which the background planning and orientation have been completed) will be interdisciplinary in that sociologists, economists, city planners, political scientists and others will be consulted in an attempt to direct the legal research to those areas which are of interest and importance to them.

The monographs outlining the present law in this field should help fill a regrettable vacuum in the present legal literature. They will be followed by a publication consisting of an analysis and criticism of the various legal methods now available for resolving metropolitan area problems coupled with suggested legislation and constitutional schemes for more adequate solutions to such problems. This latter volume will consider alternative legal structures with analyses of the advantages and weaknesses of each. Because of the great diversity of possible solutions, a guidebook for legislators and others seemed more desirable than a model code which could apply to only a few states and cities.

The Center is desirous of making contact with or hearing from any persons working on metropolitan area problems, with an eye to determining what legal questions need to be researched, what the realistic problems are, and what solutions are now being suggested or tested in different parts of the country. Correspondence addressed to the Legislative Research Center, University of Michigan Law School, Ann Arbor, Michigan, will be welcome and encouraging.

JOHN M. WINTERS
Legislative Analyst
University of Michigan
Ann Arbor, Michigan

Advertiser Shouldn't Want a "Protestant Republican"

My attention was drawn to a classified advertisement appearing in the September, 1958, JOURNAL, page 912 (first ad in column 1). The advertisement requests a partnership with a "Protestant" and "Republican".

May I express the opinion that the official journal of the American Bar Association should not lend its advertising columns to advertisements seeking partnerships with lawyers based in whole or in part upon their religious or political affiliations.

VICTOR H. KRAMER
Washington, D. C.

International Law the Field of Tomorrow

Those of us who share the conviction that international law today is not an ivory tower subject in which our university colleagues and a very limited few practicing lawyers are interested, are heartened by the fact that the coming generation of lawyers shares our views. An interesting commentary

on the feeling of the men still in law school appeared in the April, 1958, issue of the *Harvard Law Review*. The student editors, it seems, had received criticism from a subscriber who complained that the *Review* was no longer as helpful to the lawyer in general practice as it had been in the past. The editors replied:

> Top-flight law review articles are very hard to get, and unfortunately, most of those which are very good are written in the area of federal statutory law and more and more in the area of international and comparative law. In these areas is the development and the ferment and it is to these subjects that many of the best academic minds are turning.

The organized Bar is fully alive to the vital necessity of translating the rule of law to the relations between nations, as evidenced especially by the appointment of the American Bar Association's Special Committee on International Law Planning of which Thomas E. Dewey is Chairman, by its Committee on International Unification of Private Law and by the activities of the Section of International and Comparative Law.

It would seem that the lawyers of America might well take to heart the thoughts of the young men about to enter the profession, and interest themselves in the great problems in the international law field. The first step we suggest would be to join the Section of International and Comparative Law. Enrollment therein can be made merely by sending a note to the American Bar Association Headquarters to the attention of the Section. Incidentally the Section dues are the moderate amount of five dollars per year, including the receipt without charge of the Section Bulletins.

J. WESLEY MCWILLIAMS

Philadelphia, Pennsylvania

Let's Abandon Sovereignty Concept To Keep Peace

In the JOURNAL for July, 1958, President Rhyne speaks of the spectacular success of the celebration of Law Day—U.S.A. on May 1, 1958, and asks for ideas and suggestions regarding Law Day for May 1, 1959. He

also suggests that Law Day next year might be used to emphasize the use of law to replace weapons in the settlement of disputes between nations.

My suggestion is that, without waiting for some particular day next year, the American Bar Association can and should start immediately upon a wide and energetic campaign to arouse the people of this country and of our allied countries—in fact, all Western civilization—to a realization of the fact that peace and unfettered national sovereignty cannot go together in a world which can be circled in ninety minutes by a device that can vaporize whole cities in one blow, and that nothing short of effective world law can create a basis for enduring peace.

People now know that war in this advanced day means utter destruction. If it starts nothing can endure. People now know, also, that an expenditure of unimaginable sums for security have brought us only fear and jitters and the risk of extermination; and it seems to me not improbable that they can now be made to see that they have no refuge save in a reign of law which is world-wide and effective throughout the world.

The idea of unfettered sovereignty, whether individual or national, dies hard. It consequently will take a vigorous campaign to achieve the objective I have in mind. But progress has been made in the past and it surely is not too much to hope that more progress can be made.

When people see suicide or surrender as the alternatives confronting them, they are apt to welcome the appearance of a third choice, and what I suggest is that the American Bar Association present as that third choice a world which is ruled by law—a world in which a world police force enforces peace.

The idea, of course, is not new. The only novelty is in the suggestion that the American Bar Association take the lead in a campaign of education designed to make the idea a reality.

The stakes are tremendous. Surely they justify an effort. . . .

CARROLL G. WALTER

Weatherford, Texas

U.N. Charter Should Not Supersede the Constitution

The United States Supreme Court in the case of *Reid* v. *Covert*, reported in 354 U. S. 1, construed Articles V and VI of the Constitution and reiterated that the Legislative and Executive Branches of the Government combined cannot nullify the prohibitions of the Constitution and on June 10, 1957, held:

> There is nothing in this language which intimates that treaties and laws enacted pursuant to them do not have to comply with the provisions of the Constitution. Nor is there anything in the debates which accompanied the drafting and ratification of the Constitution which even suggests such a result. These debates as well as the history that surrounds the adoption of the treaty provision in Article VI make it clear that the reason treaties were not limited to these made in "pursuance" of the Constitution was so that agreements made by the United States under the Articles of Confederation, including the important peace treaties which concluded the Revolutionary War, would remain in effect. It would be manifestly contrary to the objectives of those who created the Constitution, as well as those who were responsible for the Bill of Rights—let alone alien to our entire constitutional history and tradition—to construe Article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions. In effect, such construction would permit amendment of that document in a manner not sanctioned by Article V. The prohibitions of the Constitution were designed to apply to all branches of the National Government and they cannot be nullified by the Executive or by the Executive and the Senate combined.
>
> There is nothing new or unique about what we say here. This Court has regularly and uniformly recognized the supremacy of the Constitution over a treaty. For example, in *Geofroy* v. *Riggs*, 133 U.S. 258, 267, 10 S. Ct. 295, 297, 33 L. ed. 642, it declared:
>
> The treaty power, as expressed in the constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or of its departments, and those arising from the nature of the government itself and of that of the States. It would not be contended that it extends so far as to authorize what the constitution forbids, or a change in the character of the government or in that of one of the States, or a session of any portion of the territory of the latter, without its consent.

In the case of *Fort Leavenworth Railroad Company* v. *Lowe*, reported in 114 U. S. 525, the question before the United States Supreme Court was: Did a state have power to cede away her jurisdiction and legislative power over any portion of her territory, except as such cession follows under the Constitution? The Supreme Court held:

> The jurisdiction of the United States extends over all the territory within the States, and, therefore, their authority must be obtained, as well as that of the State within which the territory is situated before any cession of sovereignty or political jurisdiction can be made to a foreign country.

The sponsors of the United Nations attempted to have the U. N. Charter ratified by the legislatures of the various states but failed.

George Washington whose brilliant leadership made it possible for the various states to adopt the Constitution in his farewell address said:

> Against the insidious wiles of foreign influence the jealousy of a free people ought to be constantly awake, since history and experience prove that Foreign Influence is one of the most baneful foes of Republican Government. Real patriots, who may resist the intrigues of the favorite, are liable to become suspected and odious while its tools and dupes usurp the applause and confidence of the people to surrender their interests.

The unalienable rights of American citizens guaranteed to them in writing by the Constitution should not be superseded by the U. N. Charter without their being given an opportunity of exercising their constitutional rights.

V. J. HERMEL

Minneapolis, Minnesota

Judge Lamb and the "Sociological Approach"

Having read Judge Lamb's article in the July issue (44 A.B.A.J. 623), my reaction is that he practically shows a subtle adherence to the sociological approach by offering such a weak alternative.

MARGARET A. TOEPFER

Pittsburgh, Pennsylvania

The Problem of Delay:

A Task for Bench and Bar Alike

by Earl Warren • *Chief Justice of the United States*

Addressing the opening session of the Assembly of the American Bar Association at the Annual Meeting in Los Angeles on August 25, Chief Justice Warren gave a gloomy picture of one of the most serious problems facing the Bench and Bar today—the problem of crowded trial calendars that make it impossible for cases to be reached for trial for many months. These interminable and unjustifiable delays are compromising "the basic legal rights of countless thousands of Americans and, imperceptibly, corroding the very foundations of constitutional government in the United States", the Chief Justice warned. His address is published here in full.

I am happy for the opportunity of appearing before this Assembly Session of the 81st Annual Meeting of the American Bar Association. My purpose is to give you the candid report on judicial administration in our country to which you are entitled; to do what I can to place in perspective the basic problems facing our profession; and to suggest the lines of action which must be taken if we are to overcome widespread inertia and improve the administration of justice throughout the United States.

It is in this spirit that I must report that interminable and unjustifiable delays in our courts are today compromising the basic legal rights of countless thousands of Americans and, imperceptibly, corroding the very foundations of constitutional government in the United States. Today, because the legal remedies of many of our people can be realized only after they have sallowed with the passage of time, they are mere forms of justice. And, to the extent that this is so, there is created a disrespect for law at a time when everyone should be continually conscious of the fundamental principle that it is primarily the law and its adequate enforcement which makes individual liberty possible.

It was this very concept that the late lamented Judge John J. Parker, Chief Judge of the Court of Appeals for the Fourth Circuit, had in mind when he said:

> If democracy is to survive . . . in the contest with foreign ideologies and systems, it must be able to demonstrate its efficiency; and nowhere is this efficiency more important than in the fundamental matter of administering justice. The administration of justice is the lawyer's business; and to see that that business is conducted with efficiency is one of the most important duties that confronts him.

This is a proper admonition. It challenges us to look critically at our profession and at the administration of justice to determine whether we are fully discharging our duty or whether we are merely content to sit back—as has happened too often in the past—and wait until solutions to our problems are thrust upon us by an aroused lay opinion.

These problems must be solved not only in the *interest* of the people, but also to their *satisfaction*.

Inaction from *within* our profession must, of necessity, bring about action from *without*. And—if that is done—it will occur at a time when there is a serious malady of the judicial machinery. It will involve many misunderstandings. It will be done in haste, if not in hysteria, and without deep appreciation of the elements of the problem. That *would* be a tragic thing for our country. It would bring about —not only a continuous tinkering in order to remedy every little outcropping of inefficiency—but a greatly diminished prestige of our judicial system and the rule of law at a critical moment in history.

On the other hand, if we who have the prime responsibility for the administration of justice will join together in the common cause, we can provide the remedies that are needed. *We* can do this in a manner that will not only be orderly, but one that will increase the confidence of the American people in both our courts—state as well as federal—and in the profession as a whole.

When I say WE, I mean both the Bench and the Bar of America, be-

cause it is together that we have the responsibility of making justice effective. Neither can function in a vacuum or independently of the other. Both must possess the vision, and exercise the self-discipline essential to an efficient administration of justice. No lawyer can think only in terms of his client of the moment or of the interests he usually represents, and no judge can think solely of the particular cases that he decides. Each must relate his responsibilities to the orderly and effective administration of justice in its broadest terms.

We believe that we have in America the greatest system of law and justice ever envisioned.

But, surely, that can be of but little comfort as long as you and I know that our United States district courts are saddled with a backlog of 70,000 cases —enough to keep all of the district judges busy for more than a year even if not another case is filed!

And—the situation is rapidly growing worse.

Since your Annual Meeting in New York in July of last year, the backlog in civil business alone has increased by more than 6,000 additional cases,— the normal annual output of twenty-five district judges.

Today, nearly 40 per cent of all civil cases in federal district courts are subject to undue delay—from one to four years between the dates of issue and trial.

The Judicial Conference, as you may know, has recognized six months as the time it should normally take between the time of filing and date of trial for the ordinary case. Unfortunately, only seven districts out of the ninety-four districts met this standard in 1957.

For this, the judges individually cannot be blamed. They are working harder than ever. Some are breaking their health in an effort to stem the tide. United States district judges today dispose of an average of 232 cases each year as compared with 168 cases in 1941. Yet, during this period, the backlog on civil cases has increased from 137 to 243 cases per judge.

I ask you not to think of these as mere statistics, but in terms of the affairs of human beings who, because of these delays, unjustly experience suffering and hardship.

Why the Delay? What Can We Do?

WHY, then, do we have such pressing problems? And WHAT can we do about solving them?

The principal reason for these problems, I believe, is that our judicial systems—both state and federal—have just "growed", like Topsy—without proper organization and administrative planning.

In our Constitution it was not determined what kind of a federal court system we should have. It merely provided that there would be one Supreme Court and such other federal courts as Congress might establish.

It is true, of course, that the Judiciary Act of 1789—which has been termed the most important and most satisfactory act ever passed by Congress—created a sound judicial structure which survived unchanged for nearly a century. Except for altered concepts of jurisdiction, and the Court of Appeals Act of 1891, the judiciary is as originally constituted and its basic structure is sound.

But, in striking contrast there is the hodge-podge development of the managerial aspects of handling the business of the courts and the snail's pace at which we have devised sound administrative techniques to meet new demands and changing conditions.

For more than 130 years—from 1789 to 1922—the federal judiciary operated without any central co-ordinating body whatsoever. Then, in that year—thanks to the good work of Chief Justice Taft —Congress authorized the establishment of the Judicial Conference of Senior Circuit Judges. This was a start, but it proved to be a meager one. The courts profited little from it because the Conference was a loosely knitted group, without an administrative arm equipped to implement its policies.

In 1939, these weaknesses were recognized, but again the remedy was not complete. Circuit councils were created which were given supervisory powers over district courts. At the same time, the Administrative Office of the United States Courts was established to serve as the administrative adjunct to the Judicial Conference. The intent was that this office should exercise business management and compile and report needed statistics for the courts.

It was not until 1948—barely ten years ago—that the statutes adopted a definite plan as to how multiple-judge courts should be administered, how the business of the courts was to be divided, and who was responsible for getting the work done. In 1948, when it revised the Judicial Code, Congress created the position of Chief Judge, with limited administrative authority, and provided that the district courts might make rules for the allocation of their judicial business. Thus, from 1789 to 1948—almost 150 years— the statutes were silent on these rudimentary, but crucial, matters.

Throughout this century and a half, precious little was done to develop methods for better utilization of our judicial machinery. To the contrary, the standard formula was to ignore administrative improvements and to correct bad situations by merely increasing the number of judges on an *ad hoc* basis.

Each judge was, more or less, on a judicial island by himself. Some judges had too much to do, and others not nearly enough. Yet, there was no way of distributing the work so that judge-power might be better utilized. Some managed their calendars well—others badly. Some judges required lawyers to be expeditious in the trial of their cases—others operated on a laissez-faire basis.

In many places, highly individual practices developed, and cumbersome and obsolete procedures persisted. Calendars were filled with a mass of cases—deadwood never destined to come to trial—that blocked these cases in which prompt trial was essential. There existed absolutely no way to ferret out good administrative techniques in one district and to transplant them in others. The result, quite candidly, is that our federal judicial system is largely barren of the modern concepts of administration which are so familiar, and so much in use, in the

executive departments of government and in private business.

The State Courts . . . A Similar Problem

The federal judiciary does not stand alone in its problems, for much the same type of development has characterized our state judicial systems. They are burdened with anachronisms, a large number of courts with overlapping jurisdiction and other outmoded procedures.

As a consequence, some of our state courts report trial delays up to five and six years. Nineteen counties, with heavy metropolitan populations, report the average time from the joining of issue to trial is twenty-one months.

Perhaps the most discouraging thing is that about half of the states may not even know what their situations are, twenty-eight states have no judicial councils. Twenty-four states have no administrative offices. Only *four* states have seen the wisdom of vesting their chief justices or judicial councils with sufficient administrative responsibility to insure a unified administration, and to promote efficient operation of their court systems.

There are, however, bright spots on an otherwise dim horizon. Several states have taken concrete steps to improve the business of their courts. In fact, progress in a few jurisdictions is impressive and should serve as examples for others.

I point to Maricopa County, Arizona, where the City of Phoenix is located. In April, 1935, the Superior Court there had a backlog of 1,475 cases. One year later, this backlog had been reduced by 636 cases. This was accomplished without adding new judges and without any change of court structure or procedural rules. I am told that the improvement was due entirely to intelligent administrative planning and to the concentrated attention which was devoted to the problem of congestion.

You all know of the experience in New Jersey where, during the first year of operation under the new Constitution, the courts disposed of almost twice as many cases as had been disposed of in the previous year. What you may not know is that—again—this was done without adding any new judges, but solely as the result of an improved court structure, improved procedure, improved judicial administration and, last but not least, the inspired leadership of Chief Justice Arthur Vanderbilt.

Arthur Vanderbilt never tired of saying that the problem of delay could be solved. "The practical solutions of these problems", he said, "given a real determination to do so, is much simpler than most people suspect. It is not knowledge of ways and means that we lack; it is the will to put them into effect."

Other jurisdictions, such as Michigan and California, have also taken forward strides to improve judicial administration by making pretrial compulsory, a device which has proved exceedingly useful in reducing backlogs and congestion.

What about progress in our *federal courts?* Some improvements have been made, chiefly because of the untiring efforts of such men as Judges John Biggs, Jr., Charles E. Clark, Orie L. Phillips, the late John J. Parker, Albert B. Maris and Alfred P. Murrah, all of whom have served as chairmen of important committees of the Judicial Conference.

The process has been most painful. Judge Murrah has tried for ten years to demonstrate to our federal judges—and for that matter to all judges and lawyers—that, when placed in the hands of an able and sympathetic trial judge, pretrial procedure is an important tool of judicial management. Only recently have we been able to detect signs of real progress.

About half of the district courts now use the pretrial conference procedure in some manner in all civil cases coming on for trial. The two federal judges in New Orleans are disposing of 1,200 civil cases each year, largely because of the effective use of the pretrial conference. And three years ago the federal judges in the Southern District of New York initiated a calendar call system that reduced their civil calendar substantially in two years.

Others have made progress by use of the master calendar system.

In August of 1957, thirty federal judges convened for an entire week at New York University to study intensively pretrial techniques and protracted litigation. Just last week sixty federal judges assembled at Stanford University to further explore pretrial conference techniques, not only in the protracted case but in every civil case.

Chief Justice Warren

Apart from efforts within the judiciary itself, this year the Attorney General of the United States, Mr. William P. Rogers, convened a Conference on Court Congestion and Delay. This was a second time in the history of the country that the prestige of the Department of Justice of the United States was brought to bear on the problem of delay in both the federal and state courts. The recommendations of that conference were notable and several are already on the way to full implementation.

And, throughout the year your able president, Mr. Charles Rhyne, in a one-man crusade, has alerted bar associations throughout the country to the necessity of improving the administration of justice.

Congress, too, is aware of our problems and in recent years where leadership has been demonstrated on the part of the Bench and the Bar, it has usually responded to our needs.

I know, however, that you must share with me extreme disappointment that Congress in this last session did not heed the plea of the American Bar Association and the Judicial Conference of the United States to authorize additional judgeships. This failure to

provide more judges is not only discouraging, but it is working an extreme hardship on thousands of litigants who look to the courts for justice.

More Judges . . . A Pressing Need

There is an immediate and most pressing need for additional judges. No new judgeships have been authorized for more than four years and, during that period we have lost three positions as the result of the expiration of judgeships created on a temporary basis. The Congress had before it recommendations by the Judicial Conference for forty-five additional judgeships, many of which were contained in the omnibus bill introduced as long ago as 1955. These are not just requests from localities for more judges. They are recommendations of the Judicial Conference of the United States based upon serious study of the statistics and conditions facing the particular districts and circuits for which the additional judges have been recommended.

We must, however, temper the disappointment we feel with this realization: that while more judges are essential to enable us to keep pace with the growing population, we cannot expect our real strength to flow merely from expanding the judiciary. That has been done in the past and it has been found not adequate. Our strength must come mainly from improved methods of adjusting caseloads, dispatching litigation for hearing, resolving complicated issues, eliminating non-essential ones, increasing courtroom efficiency, and through dispatch in decision making and appeal. *These things Congress cannot do for us. We must do them ourselves.*

Now I hasten to say, lest I be misunderstood, that I do not advocate any form of mass production in our courts. On the contrary, it is precision that is desired;—the precision that flows from improved methods designed to meet drastically changed conditions. Necessity compels every other profession to improve its techniques to meet new conditions. The same necessity confronts us.

Our entire system of government is on trial—not only as to its ability to meet problems to the satisfaction of our people but, also, to convince the world, which has its eyes continually on us, that under free institutions which grow and develop without compulsion, there can be efficiency and dispatch in the handling of all the far-flung controversies involving human affairs. Therefore, I urge that we make the improvement of the administration of justice the great central cause of our profession, and that all other causes be made to conform to it. After enlisting myself, I call upon each and every one of you to rise and join in meeting this great challenge of our day.

For those of you primarily concerned with the business of our federal courts, I urge you to co-operate with your circuit and district judges and to assist them in making the judicial conference of your circuit work—to make of it an effective and important means of studying, on a continuing basis, all of the problems relating to the efficient and expeditious administration of justice.

I urge those of you who compose the judicial councils of the circuit to re-examine the responsibility and authority vested in you by Congress, and to utilize fully these powers in improving the administration of the courts of your circuit.

I urge you—lawyers and judges alike—to devote a measure of your time and effort to pretrial conferences so that, in the federal system, this technique of coping with congestion might be more fully developed and utilized.

I urge each of you who are judges to re-examine your dockets and to bring the full prestige of your judicial office to bear at every stage of litigation to insure promptness and efficiency.

I urge those of you primarily concerned with our state courts to co-operate with and to assist your judges, to reappraise your needs, and to take the necessary action to improve the administration of justice.

In this respect, I urge you to consider seriously the advisability of creating an administrative office for the courts of your state—an office to develop basic statistical data and information upon which intelligent and effective action can be based.

I urge you to give consideration to the usefulness of a judicial council in your state—a council which might be created to discuss and formulate policy for the administration and programs for the operation of your courts.

I urge you—members of the Bench and Bar—to join hands to convince your legislatures of the need for vesting in your courts the necessary authority to bring about a unified administration of the courts under modern court made rules.

And, if you are in one of those states which has previously established such offices, I urge you to visit them, to determine whether they have sufficient statutory authority, adequate funds, and the staff to perform a good, worthwhile job—and to see that they are doing it.

Fight Congestion . . . Eliminate Delays

Finally, I urge all of you—in every jurisdiction—to fight court congestion as you would a plague, and to eliminate stoppages and delays from whatever cause, regardless of the effort called for or the personal feelings involved.

Let me say, that as a group we lawyers are sometimes inclined to resist changes in practice, as being inconsistent with "the good old days"—and are inclined to think of our development as originating, strong and firm, in the beginning days of our country.

To be sure, we had great lawyers and patriots throughout the Colonial period but in those early days the Bar of this country was entirely an individual matter. There were no law schools or bar associations of note, and, because of public dissatisfaction the profession was not highly regarded. As a matter of fact, widespread efforts were made to suppress the practice of law and to conduct the administration of justice without lawyers.

In Virginia, an early enactment provided that no attorney should plead in any court, give counsel in any cause or controversy, for any kind of reward or profit, directly or indirectly, under penalty of law.

In Pennsylvania, William Penn intended that the laws in his colony should be so plain and the pleadings

(Continued on page 1069)

A Sacred Goal:

Peace Under Law

by **Thomas E. Dewey** • *of the New York Bar (New York City)*

This is Governor Dewey's oral summary of his report to the House of Delegates as Chairman of the Association's Special Committee on International Law Planning. Pointing out that the task ahead would be hard, Mr. Dewey called upon lawyers to work for the development of skills and techniques that can be used to secure peaceful settlements of disputes between nations.

At the outset we must recognize the dominant fact of the world in which we live: Peace through law can only be achieved between nations which desire it. Expansive, imperialist Communism is in control of one third of the world's population. The Soviet Union does not even honor its most solemn commitments. Her announced intention remains the Communist conquest of the world either by armed force or subversion, or both.

So long as the world continues in this posture, peace will only be maintained through equal or greater force. As lawyers, we must be realistic enough to recognize that we are dealing with two separate problems on two entirely different levels. One is legal; the other is political and military. I shall deal first with the legal problem which is reflected by the report of our Committee.

Pioneer efforts in modern times at peaceful settlement of international controversies may be said to stem from the Jay Treaty of 1794. A number of disputes arose between Britain and the United States following the Revolutionary War, a principal one of which involved the boundary between the State of Maine and Nova Scotia. It had been fixed by the treaty of peace at the St. Croix River; but the trouble was that there were two St. Croix Rivers.

Putting the issue into the hands of arbitrators enabled public debate to subside, nationalist tempers to cool and quiet negotiations to proceed between the nations. The result was a compromise which placed the boundary at neither of the two St. Croix Rivers, but halfway between. This was not judicial settlement or even arbitration in the usual sense, but it worked and it kept the peace.

There followed a full century in which the device of international arbitration reached its fullest flower. More than 177 international disputes were States was a party to seventy-nine of them.

Arbitration achieved such high prestige that world sentiment supported major efforts to formalize the procedures. As a result the Hague Convention of 1899 established the Permanent Court of Arbitration and it was widely hailed as another great step toward peace in the world.

Still the Court had no power of compulsion. So the next few years saw widespread efforts to negotiate bilateral treaties whereby nations bound themselves to submit future disputes to arbitration. Great progress was made in this area and a number of such treaties were negotiated by Secretary of State John Hay. Then the whole process was dealt a grave blow when the Senate of the United States refused to ratify the treaties except upon a submission of the *compris* to the Senate in each case. As a result, American world leadership was weakened; other nations followed suit and arbitration diminished in significance and use.

By 1920 the world was ready for another effort. With brilliant leadership from the United States the Permanent Court of International Justice was created under the League of Nations. Forty-five nations filed their declarations accepting compulsory jurisdiction of the Court and sixty-five disputes were brought to the court between 1920 and 1945.

Once again, however, the United States failed to adhere to the court and our influence waned.

With the formation of the United Nations in 1945, the Permanent Court was reconstituted as the International Court of Justice. This time thirty-one nations accepted its compulsory jurisdiction in the limited areas involved.

But this time the United States Senate reserved to itself the right to determine what matters are within our domestic jurisdiction, and our adherence is therefore of limited usefulness.

Meanwhile, regional organizations were developed in the Western hemisphere with considerable success for periods of time. The most promising of all regional developments have been in Europe since World War II. These began with the judicial machinery set up under the Schuman Plan and the power of that court has been extended widely by the more recent development of the European Economic Community and the European Atomic Energy Community.

Such is a very brief summary of the historical survey in the report. Appendix A deals with the pressing need for a restatement of international law and the steps that are being taken to fill the vacuum. Appendix B reviews the lively and vital contributions which have been made by private organizations such as the International Commission of Jurists. Appendices C and D list the forty-nine different committees of the Association which deal with various aspects of these problems and a number of the recommendations made by the Association itself in recent years.

Appendices E and F refer to the necessity for agreement as to the law of space, the development of mediation procedures, arbitration of private disputes and methods of preventing expropriation of foreign assets. The conclusions of the report point up the necessity for a fundamental change in the approach of all nations if peaceful settlement of international disputes is to be achieved. It is still true that after a century and a half of continuing, active efforts by many of the world's ablest leaders, the major nations have been unwilling to accept wholeheartedly the jurisdiction of international courts which they themselves created. As of today, under the shadow of nuclear warfare, not a single major nation has even accepted unqualifiedly the compulsory jurisdiction of the International Court.

On the other hand, there are promising signs in the development of law in the European community, growing interest of lawyers and scholars in the subject and the obvious yearning of people everywhere for peace and the preservation of civilization. In the advancement of this cause the report points out that there is much the Association can do.

As an entirely personal comment, I want to emphasize what I said at the beginning: we must recognize that there are two subjects here and not one. World opinion accepted arbitration and used it increasingly in the nineteenth century. Both statesmen and world opinion desired to develop that experience into genuine courts with compulsory jurisdiction and during the last sixty years procedures were set up which operated with great success in a large number of disputes.

Nevertheless, during this same period, there occurred, among others, the Franco-Prussian War, the Russo-Japanese War, World War I, World War II and Korea.

Obviously it is a vast leap from the peaceful arbitration of ordinary disputes to the prevention of major wars. It is an impossible leap today, when one third of the world is ruled by an armed dictatorship determined to conquer the world. In fact international law and keeping the peace are, to some extent, two entirely different subjects.

We must recognize that in all of our labors for peaceful settlement of international disputes they will succeed as they have in the past only where there is a basic desire on the part of both parties to keep the peace. Voluntary submission of disputes to arbitration or judicial determination is a far cry from compulsory submission. It only occurs when the nations involved want peace, not war. Since most of the nations desire peace we have a clear mandate to work hard in the development of much better machinery and much better support for peaceful settlements between the nations of the free world.

For this there are many reasons. The flag of peace under law must be kept flying; it needs greater vigor and much wider popular support, else it will wither and die. The success of this effort may in truth determine whether we shall live to see the next stage. If the free nations cannot settle their arguments in peace and good will they will surely fall apart into petty, defenseless disputants. If we fall apart, we shall all die or be conquered.

United, we can preserve the physical and moral strength necessary to maintenance of the overwhelming power which alone will prevent war.

Even as we develop the peaceful machinery of the free world, we shall be learning better how to adapt its power to the situation which may some day arrive when Communist nations become sufficiently civilized to join the peace-loving people of the world. This might come in our time or not for many decades. When it does come, a system of compulsory settlement of international disputes under law should be so fully developed that it can be easily applied to the newcomers. There must also be developed by that time the means of enforcement which the world is not yet willing to establish.

This is the political task, the military task, the function of the statesmen. The Concert of Europe failed in the nineteenth century. The League of Nations failed in the twentieth century. Whatever its defects, the United Nations is the only means available now through which there can be developed the intellectual, political and military strength by which peaceful settlements can be made enforceable.

As lawyers, I conceive it to be our high duty to develop the skills and techniques for peaceful settlements. As citizens of the free world it is our duty to support the means by which we can arrive at that sacred goal of peace under law which men everywhere will observe.

A Proposed Code of Conduct:

The Relationship of Lawyers and Accountants

by William J. Jameson • *Judge of the United States District Court for the District of Montana*

The relationship between lawyers and certified public accountants, especially in questions of taxation, is a problem that has been plaguing both professions for several years. Judge Jameson is Co-Chairman of the National Conference of Lawyers and Certified Public Accountants, a group formed by the American Bar Association and the American Institute of Certified Public Accountants to work out specific solutions for these problems. The Conference has now written a proposed "Code of Conduct" for both professions. In this address before the Section of Taxation during the Los Angeles Annual Meeting, Judge Jameson discussed the nature of the problem and the general outline of the proposed code.

When I speak to a group of tax lawyers or tax accountants, I feel compelled to make it clear at the outset that I do not qualify as an expert in any phase of tax law. I doubt if there is anyone in the room today who has had less experience in this field. When I was engaged in private practice, I made no pretense of passing on any tax question, but referred any legal tax problem to one of my partners or associates who knew something about the subject and any accounting problem to my client's accountant. Since I went on the Bench I have been obliged to decide a few tax cases myself. On some of those occasions I have wished that I might still refer the problem to some partner or associate.

When I was first appointed to serve as Chairman of the Association's Committee on Professional Relations and the National Conference of Lawyers and Certified Public Accountants, I had no personal knowledge of the differences then existing between lawyers and accountants. I may have heard of *Bercu*, *Agran*, and *Gardner* v. *Conway*, but hadn't the slightest notion of what any of them involved. As a result, perhaps I did bring to the problem an optimism which at the outset was wholly unjustified and an objectivity which offset to some extent the unwarranted optimism.

I am pleased to report to you today that substantial progress has been made in the National Conference during the past four years. When the Conference was first reorganized there was an atmosphere of tension and suspicion. Frequently each group would meet in separate sessions before stating a position in the presence of the other group. Today the meetings are held in a relaxed and cordial atmosphere. Each member of the Conference expresses his own viewpoint freely and frankly. Many controversial problems have been resolved. In the few instances where thus far this has been impossible, each side respects the viewpoint of the other, and efforts are continued to reduce any area of disagreement.

The National Conference has recommended joint committees at the state level, but has not exerted any pressure to effect this recommendation. Joint committees are now organized in a total of at least twenty-four states, with varying degrees of activity. I think one of the most active is in the State of Washington. You may be interested in a letter I received recently from the Chairman of the lawyer members of the Washington Conference group. He described a joint meeting of the Washington State Society of Certified Public Accountants and the Washington State and Seattle Bar Associations, at which Mr. Harry Graham Balter, of Los Angeles, was the principal speaker. They also "had occasion to restate the principles of the National Conference of Lawyers and Accountants and to call attention to the existence of the Conference Committees of both professions who were at all times available to settle controversies between members of the professions". He reports further that "relations continue good in Washington". The same is true in other states where Conference groups are organized and active.

In a few states tax institutes are sponsored jointly by bar associations and societies of certified public accountants. In others, institutes are sponsored by a college or university, with co-operation from members of the two professions. These institutes present an opportunity to emphasize the Statement of Principles adopted by the American Bar Association and Insti-

tute of Certified Public Accountants, as well as help promote a better understanding between the two professions. For example, here in Los Angeles, last October, at the Institute on Federal Taxation conducted by the Law School of the University of Southern California, John Queenan, co-chairman of the National Conference, discussed the "Role of the Accountant in Tax Practice", and Dean Erwin Griswold, a member of the Professional Relations Committee, presented the "Role of the Lawyer in Tax Practice". Just recently I had the pleasure of reading another excellent paper presented at that Institute by Lewis M. Brown, a member of the Los Angeles Bar, who spoke on the accountant as a problem-discoverer. All of these activities lead to a better understanding of the proper function of lawyers and certified public accountants in tax practice and to better co-operation between the two professions.

A constantly recurring theme in meetings of the National Conference has been the suggestion of bar groups that lawyers employed by large accounting firms were in fact practicing law and giving legal advice to clients of the accounting firm. The accountant members of the Conference have questioned the validity of these complaints, but have agreed that the practice is improper. In turn, they have called attention to instances where accountants were employed by legal firms and the complaint was made that they performed services as accountants for clients of the firm. The position of the accountant members of the Conference that lawyers employed by accounting firms may not properly render legal services to clients of the firm is now officially expressed by the Institute in its Rule No. 17, which reads: "A member in his practice of public accounting shall not permit an employee to perform for the member's clients any services which the member himself or his firm is not permitted to perform."

Some time ago the Committee on Professional Relations appointed a sub-committee, composed of William T. Gossett, Erwin N. Griswold, George E. Brand and Louis Boxleitner, to consider all aspects of the problem presented by lawyers and certified public accountants who practice in association, as well as individuals possessing dual qualifications both as lawyers and certified public accountants. The result is a draft of a Code of Conduct, prepared by Mr. Gossett as Chairman of the Committee, which has been submitted to both the Committee on Professional Relations and the National Conference of Lawyers and Certified Public Accountants. No action has been taken by either group, except that it was decided by both groups that the proposed Code should be presented to organizations and members of both professions. The Committee on Professional Relations will welcome comments from bar groups and individual lawyers. The Institute Committee on Relations with the Bar is equally interested in the reaction of its state and local groups and individual accountants.

You have before you the proposed Code. I will comment briefly on each of the four proposals and give you some of the arguments which have been advanced in support of the fourth and most controversial proposal, as well as arguments opposing this proposal.

The preamble reaffirms the principle set forth in the Statement of Principles that many problems connected with business require the skills of both lawyers and certified public accountants and that there is every reason for close and friendly co-operation between the two professions. It recognizes, however, that when lawyers and accountants associate professionally, or when a member of one profession is employed by the other, the method of association or employment may raise problems of conduct detrimental to the professions and to the public.

The First Situation

The first situation considered in the Code is the *employment of lawyers by a firm of certified public accountants.* On this point I have already referred to Rule 17 of the Institute. Two Canons of Professional Ethics of the American Bar Association also deal with this problem. Canon 35 provides in part: "The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. . . . A lawyer's relation to his client should be personal, and the responsibility should be direct to the client." With specific reference to the situation under consideration, the Committee on Professional Ethics and Grievances has ruled that: "A lawyer may properly be employed by a firm of accountants on a salaried basis to advise the accounting firm, but such employment may, under no circumstances, be used to enable the accounting firm to render legal advice or legal services to its client." (Opinion No. 272, October 26, 1946.) Canon 47 provides: "No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate." The Code recognizes the restrictions imposed by these canons and rules of conduct and provides:

> To avoid any misunderstanding on the part of the public and to avoid misleading the members of the public, neither a lawyer nor any accountant or accounting firm by which he may be employed shall make any reference, either in public or in communications with clients, to a law degree which may be held by him or to the fact that he may be a member of the bar privileged under different circumstances to practice law.

Nor may such reference be made in connection with the publication, distribution or advertising of any book or article written by a lawyer so employed, or in connection with his appearance as a speaker.

The Second Situation

The second situation relates to the *certified public accountant employed by a law firm* and recognizes that the relationship is proper only as long as the function of the accountant is to act on behalf of the firm itself and not on behalf of any client of the firm. If the law firm, however, holds itself out to the public as qualified to provide accounting services or permits members of the public to secure that impression, such conduct is improper and proscribed by Canons 27 and 33 of the Canons of Professional Ethics. The

Committee on Professional Ethics and Grievances has ruled that for a law firm to state publicly that it has in its employ a certified public accountant constitutes a violation of Canon 27.

The proposed Code accordingly provides that "neither an accountant nor any lawyer or law firm by which he may be employed shall make any reference, either in public or in communications with clients, to a degree or license signifying proficiency in accounting which may be held by him or to the fact that he may be the holder of a C.P.A. certificate, privileged under different circumstances to act as an accountant for clients of the law firm".

The Third Situation

The third situation covered by the Proposed Code is that of *partnerships between lawyers and certified public accountants.* Rule 3 of the Rules of Professional Conduct of the American Institute of Certified Public Accountants provides that "... participation in the fees or profits of professional work shall not be allowed directly or indirectly to the laity by a member". The term "laity" has not been defined, and it is uncertain whether it would be held to include a lawyer. (Carey, *Professional Ethics of Certified Public Accountants*, page 200).

Canon 33 of the Canons of Professional Ethics of the American Bar Association prohibits partnerships between members of the Bar and nonmembers when any part of the partnership's employment consists of the practice of law. The Committee on Professional Ethics and Grievances has ruled that a partnership between a lawyer and an accountant to specialize in income tax work and related accounting is permissible only if the lawyer "completely disassociate[s] himself from any practice or holding out that would indicate that he is a member of the Bar or in any way engaged in practice as a lawyer". Canon 33 applies, in the Committee's opinion, "to one who holds himself out as a lawyer and at the same time engages in a type of activity open to laymen, which serves as a natural feeder to his law practice" (Opinion No. 269, June 21, 1945).

The problems involved in the partnership relationship are essentially the same as those presented in the employment of a lawyer by a firm of certified public accountants, or a certified public accountant by a firm of lawyers, and both the lawyers and accountants in any partnership must observe the same rules of conduct. It follows that neither a lawyer nor an accountant may properly retain membership in both a law firm and accounting firm at the same time.

The Fourth Situation

We now come to the fourth and most controversial problem, *the individual practitioner who possesses dual qualifications.* Here the Code takes the position that an individual who is qualified to practice either as a lawyer or certified public accountant may not serve in both capacities at the same time. The Committee on Professional Ethics and Grievances stated that it is deemed to be in the interest of the legal profession and its clients "that a lawyer should be precluded from holding himself out, even passively, as employable in another professional capacity". A majority of that Committee has ruled that "a lawyer, holding himself out as such, may not also hold himself out as a certified public accountant at any office without violating *Canon 27*, because his accounting activities will inevitably serve as a feeder of his law practice" (Opinion No. 272, October 25, 1946).

The Committee on Legal Ethics of the Los Angeles Bar Association reached the same conclusion.

On the other hand, the Committee on Professional Ethics of the New York County Lawyers Association reached the contrary conclusion. Specifically that committee considered the effect of Canon 27, where two brothers, who were both lawyers and certified public accountants, had on their door this legend:

C and C
Attorneys and Counselors at Law

C and Company
Certified Public Accountants.

It was the opinion of the Ethics Committee of the New York County Lawyers Association that Canon 27 would not be violated if the brothers adhered to the professional standards applicable to attorneys at law with respect to advertising and solicitation, and that the legend on the door merely identified the firms occupying the premises and the professions practiced by them therein, and did not constitute either advertising or solicitation.

An article in the *Harvard Law Review* in 1950 presented the arguments on both sides of the question. With respect to the matter of solicitation, the article contained this statement: "... the proposed joint practice does result in indirect solicitation to the extent that legal business is attracted to the office by the accounting rather than legal proficiencies of the firm. Conversely, legal activities, insofar as they put the firm's name before possible accounting clients, would seem equally offensive to the professional ethics of accounting." (63 *Harv. L. Rev.* 1457, 1950.) On the other hand, an opinion by the Committee on Professional Ethics of the American Institute of Certified Public Accountants reached a contrary result stating that the "compelling consideration is the desirability of allowing the public

William J. Jameson is now a judge of the United States District Court for the District of Montana. A former President of the American Bar Association (1953-1954), he practiced in Billings until his appointment to the Bench.

complete freedom in the selection of lawyers and certified public accountants who the public believes can render most effectively the professional services it desires" (83 *J. Accountancy* 172).

The article in the *Harvard Law Review* suggests that a lawyer-certified public accountant engaging in the joint practice of law and accounting occupies a "schizophrenic position as a lawyer with a duty of loyalty to his client and as a CPA with a duty of impartiality. The clash in functions could appear in litigation where the attorney's privilege to refuse to reveal a client's communications might be incompatible with the need to examine him in his capacity as CPA about the facts on which he rested his purportedly impartial certification" (63 *Harv. L. Rev.* 1457, 1458 (1950)).

An article in the *U.C.L.A. Law Review* in 1956 (3 *U.C.L.A. L. Rev.* 360) contains a comprehensive review of the Canons of Ethics of the American Bar Association, the rules of professional conduct of the American Institute of Certified Public Accountants, and decisions and comments of each group relating to this problem. The authors of that article expressed the conclusion that Canon 27 and also Rule 2 of the California Rules of Professional Conduct should be amended to permit the use of the dual designation "attorney-certified public accountant" on shingles, office doors, letterheads, professional cards and permissible announcements. In that article the argument for permitting joint practice of law and accounting is best presented in the following paragraphs:

> Because the ultimate objective of the rules of ethics is the protection and advancement of the public interest, the ethical propriety of the joint practice of law and accounting must inevitably rest upon whether or not the attorney-accountant is equipped to render an especially valuable "package service" to the public. If, through offering both services, the attorney-accountant performs a needed service with more competence than could either an attorney or an accountant, it will be difficult to assert that the attorney-accountant's joint practice is inherently unethical. ...
>
> The practice of both professions by one person affords the public the opportunity of more complete, more inexpensive and better service.... Especially in the field of taxation, where the "unlawful practice of law" controversy demonstrates the close affinity of law and accounting practice, the integrated services of both attorneys and accountants are often necessary. Allowing the attorney to practice also as an accountant results in a substantial saving to the small businessman, who might not otherwise be able to afford to retain both an attorney and an accountant.

To summarize, it appears to me that the most compelling argument in favor of the limitation contained in the proposed Code is the inherent conflict between a lawyer's function as an advocate and an accountant's function as an impartial finder of fact. The most persuasive argument on the other side is the possible advantage to small taxpayers and businessmen, particularly in the smaller communities, of better service at less expense through the so-called package service of the attorney-accountant.

It is true, of course, as recognized by the Statement of Principles, that "frequently the legal and accounting phases are so inter-related and interdependent and over-lapping that they are difficult to distinguish". To some extent any accountant in tax practice is an advocate and to some extent any lawyer in tax practice is a finder of fact. It may be argued accordingly that there is no valid objection to combining both functions in one person. On the other hand, the Statement of Principles very properly suggests limitations upon each profession in tax practice. It provides that when questions of accounting arise, a lawyer should advise the taxpayer to enlist the assistance of a certified public accountant; and when questions of law arise, a certified public accountant should advise the taxpayer to enlist the assistance of a lawyer. It would seem that in general the most satisfactory results will be obtained through co-operation of the two professions and a recognition by each of the proper functions of the other.

The proposed Code follows the majority opinion of the Committee of Professional Ethics of the American Bar Association, and consistent with the position taken with respect to the other three situations, provides that "if the individual shall choose to practice law, then he may not at the same time hold himself out to his clients or to the public as qualified to serve as a certified public accountant", and "to avoid any misunderstanding on the part of the public, he shall make no reference, either in public or in communication with clients, to any degree signifying proficiency in accounting held by him or to the fact that he might be privileged under different circumstances to serve as a certified public accountant".

Conversely, "if the individual shall choose to act as a certified public accountant, then he may not at the same time hold himself out to his clients or to the public as qualified to practice law", and he should not refer "to any law degree held by him or to the fact that he might be privileged under different circumstances to practice law".

I call your attention to the conclusion of the proposed Code, which reads:

> This Code of Conduct is designed to alleviate serious problems affecting the relations between members of the two professions and to attempt to insure that the public will not misapprehend the character of the services that they are qualified to render. Operating within the framework of this Code, the lawyer still may utilize knowledge and training in accountancy to become a better lawyer, and the certified public accountant still may utilize knowledge and training in the law to become a better accountant. It is hoped that as some of the problems affecting the relations between the professions are laid to rest by adherence to this Code, mutual trust and confidence will continue to improve and close and friendly co-operation between the members of the professions will continue to flourish.

As I said at the outset, as yet no official action has been taken by the National Conference of Lawyers and Certified Public Accountants with respect to the adoption of this Code. Before action is taken, the members of the Conference desire a full discussion and complete understanding of the provisions of the Code. Already one member of our committee has proposed five changes in language. We invite your comments, either favorable or unfavorable. We welcome suggestions for changes and improvements.

A Historic Move:

Delaware Abolishes Capital Punishment

by James V. Bennett • *Director of the Bureau of Prisons, United States Department of Justice*

On April 2, 1958, Governor J. Caleb Boggs of Delaware signed into law a bill abolishing capital punishment and substituting life imprisonment. Thus Delaware becomes the seventh state to legislate against capital punishment. Michigan had been first in 1847, Rhode Island in 1852, Wisconsin 1853, Minnesota 1911, North Dakota 1915, and Maine in 1876, only to restore it in 1883, and finally abolish it in 1887.

Nine other states have abolished capital punishment for short periods only to reinstate it, usually after a particularly heinous murder. These states were Iowa, Kansas, Colorado, Washington, Oregon, South Dakota, Tennessee (except for rape), Arizona, and Missouri.

The Delaware capital punishment bill was first introduced in 1955 by State Senator Elwood F. Melson. However, it was not until June, 1957, by a vote of ten to one, with three not voting, that the Delaware Senate passed the bill. In the Delaware House of Representatives the bill gained support only after the "Cobin report" was distributed to the delegates. Prepared by Herbert L. Cobin, former chief deputy attorney general, Wilmington lawyer and President of the Delaware Prisoner's Aid Society, the classic report brings together the highlights of evidence produced before the Commissions and Committees which studied the problem in England, Canada, California and Illinois, as well as the comments of noted criminologists.

This report was followed by a public hearing on March 11 before the entire House of Representatives called by Representative Sherman W. Tribbitt, chairman of the Judiciary Committee. Among the speakers were Dr. Thorsten Sellin, Professor and Chairman of the Department of Sociology at the Wharton School of Business and Finance, University of Pennsylvania; James A. McCafferty, Criminologist for the U. S. Bureau of Prisons, who reported the national downward trend in executions; Trevor Thomas, former executive secretary of the Friends Committee on Legislation of California; Dr. M. A. Tarumianz, state psychiatrist and superintendent of Delaware's mental health institutions; Rev. Henry N. Herndon, rector of Calvary Episcopal Church, Wilmington, and Rev. Robert W. Duke, of Dover.

The nine arguments forwarded by Mr. Cobin and essentially supported by the witnesses were:

1. The evidence clearly shows that execution does not act as a deterrent to capital crimes.

2. The serious offenses are committed, except in rare instances, by those suffering from mental disturbances; are impulsive in nature; and are not acts of the "criminal" class. Of those executed in Delaware, 50 per cent had had no previous conviction.

3. When the death sentence is removed as a possible punishment, more convictions are possible with fewer delays.

4. Unequal application of the law takes place because those executed are the poor, the ignorant and the unfortunate without resources.

5. Conviction of the innocent does occur and death makes a miscarriage of justice irrevocable. Human judgment cannot be infallible.

6. The state sets a bad example when it takes a life. Imitative crimes and murder are stimulated by executions.

7. Legally taking a life is useless and demoralizing to the general public. It is also demoralizing to the public officials who, dedicated to rehabilitating individuals, must callously put a man to death. The effect upon fellow prisoners can be imagined.

8. A trial where a life may be at stake is highly sensationalized, adversely affects the administration of justice, and is bad for the community.

9. Society is amply protected by a sentence of life imprisonment.

Impressed by this cogent evidence, the Delaware House weighed the bill from March 11 to March 24 and passed it by a vote of eighteen to eleven.

Disturbed by details of the bill, but not the principle, Attorney General Joseph Craven urged the Governor not to sign the bill. He indicated that the bill made no distinction between the release from prison of first and second

degree murderers who receive "life" sentences. Also he supported retaining the death penalty for murderers convicted of a second homicide in a prison break. Another objection was the belief that any repeal of the capital punishment law would result in a heavier murder trial list or more frequent state acceptance of a guilty plea of manslaughter.

Nevertheless the attorney general did favor abolishing capital punishment on two grounds: humane consideration and the fact that juries are disinclined to convict defendants where the punishment is death without recommendation of mercy.

Governor J. Caleb Boggs in signing the historic bill appears to have had convictions similar to those appearing in the closing paragraph of a *Wilmington Morning News* editorial:

> Now, we believe, the people and the state are ready for this historic step. But the innovation will still be on trial. One particularly revolting crime during the next few years, or a wave of the sort of crimes to which the death penalty formerly applied, could bring an outcry for the restoration of capital punishment. Barring this sort of mischance, we are confident that in Delaware as elsewhere, experience with the abolition of the death penalty will bring the settled conviction that it was the right thing to do.

The Bar Is Not Overcrowded:

Some Facts About an Ancient Legend

by **Reginald Heber Smith** • *of the Massachusetts Bar (Boston)*

In his farewell letter to the alumni of the University of Illinois School of Law, Dean Albert J. Harno wrote: "I have mentioned the far-reaching implications which the current trend in education may have for various disciplines and vocations. The fact is that any great civilization must enjoy the permeating influences of broad cultures, of which the law is only one. But let no one doubt that the law is a *sine qua non* of any civilization."

The legal profession exists to serve the needs of our people individually and their collective needs as an organized society.

President John W. Gardner of the Carnegie Corporation in his 1956 report has given this definitive *general* analysis:

> Between 1870 and 1950, the number of professional workers has grown three and one-half times faster than the nation's population, and three times faster than the labor force generally.
>
> The demand grows out of the nature of our society.... We are just beginning to understand that one of the distinguishing marks of a modern, complex society is its insatiable appetite for educated talent.

The most dramatic increases in educated talent have come in the fields of science and technology. In 1870 scientists and engineers represented roughly 3 per cent of all professional persons, and by 1950 they constituted over 20 per cent.

> It is not just technologists and scientists that we need.... We desperately need our gifted teachers, our professional men, our scholars, our critics, and our seers.

Dean Albert J. Harno of the University of Illinois School of Law, who is as well qualified as anyone to speak for the legal profession, gave this reply in his July, 1957, farewell letter to his alumni, and I have italicized his words:

> *The fact is that there is today a serious shortage of lawyers, and in my judgment that shortage will become definitely more acute before there will be any improvement in the situation.*
>
> *This is a question on which the profession and the public generally are so misinformed that I hesitate even to mention it.*

The Survey of the Legal Profession has proved that Dean Harno is correct. All the records are available and have been published year after year for many years. But, as the Dean concludes:

> What is believed and accepted generally is that the legal profession is overcrowded. The profession believes this, and the public believes it.

Now for the facts—covering the period from 1930 to date. The statistics as to law students come from the American Bar Association's Section of Legal Education and Admissions to the Bar; the figures as to admissions to the Bar come from the National Conference of Bar Examiners; the estimates of popu-

TABLE I

Decade of (Inclusive)	Total Students in Law Schools	Total Number Admitted to Bar	Population
1930-39	390,840	91,245	123,000,000 (1930)
1940-49	294,100	65,513	150,000,000 (1949)
	Decrease 96,740	Decrease 25,732	Increase 27,000,000

TABLE II

Year	Total Students in Law Schools	Total Number Admitted to Bar	Population	Admissions per Million
1949	56,102	13,344	150,000,000	89
1950	51,695	13,641	152,000,000	89
1951	46,037	13,141	154,000,000	85
1952	44,981	11,900	157,000,000	76
1953	42,548	10,976	159,000,000	69
1954	42,762	9,928	161,000,000	62
1955	40,158	9,587	164,000,000	58
1956	42,089	9,450	167,000,000	57
1957	41,781	?	171,000,000	?

Reginald Heber Smith is one of the pioneers of the Legal Aid movement in the United States. He is Director of the Survey of the Legal Profession and received the American Bar Association Medal in 1951.

lation are those of the United States Department of Commerce.

In order to go back nearly a generation for a starting point, we must realize that two cataclysmic periods in our history had such violent repercussions that year by year statistics became meaningless.

Late in 1929 the stock market collapsed and there followed the worst depression we have ever known. The growth of population was arrested, which affected the future school enrollment, and economic insecurity made it impossible for many families to send their sons and daughters on to college and law school.

World War II suspended legal education and closed the law schools. To illustrate from the experience of the Harvard Law School, a survey by the *Harvard Law Record* of April 24, 1958, reminded us of—

> September 1941 when 1,249 were registered. By April of 1942 as the national emergency became more grave the student body had been reduced to 572.
>
> The low point was reached in 1944-45 when only 47 men registered for courses.
>
> The Law School buildings had been taken over for several military uses. The faculty was reduced to a skeleton force with most of the members in the armed forces or with the government.

The honest way to deal with periods of upheaval is to forget annual statistics and to deal with a decade as a whole.

In Table I there are the facts for the two decades 1930-39 inclusive and 1940-49 inclusive.

These figures show that when we compare the decade of the forties with the decade of the thirties, the number of young men and women studying law *decreased* by 96,740 and the number admitted to the Bar *decreased* by 25,732 while the population was *increasing* 27,000,000.

Has that decrease in admissions of more than 25,000 been made up? In Table II are the figures year by year from 1949 to 1957 as to law school students and from 1949 to 1956 as to admissions. (It is expected that the 1957 figure for admissions will shortly be published by *The Bar Examiner*.)

The downward direction is obvious. Perhaps it will reverse itself. But a downward trend for twenty-six years in the life of an essential profession while the population it serves has been increasing by leaps and bounds is a phenomenon that should not be ignored or glossed over.

The reasons for the decline may be found in public opinion, in low incomes and in other factors. But all that is another story.

Labor Law:

The Case for the Union Lawyer

by Robert M. Segal • *of the Massachusetts Bar (Boston)*

Mr. Segal's article is a reply to one by Senator John F. Kennedy in the May issue of the JOURNAL. Senator Kennedy was critical of the role that a few union lawyers play in the affairs of their client-unions. Mr. Segal replies that union lawyers, as a group, are perhaps more devoted to the law than many of their fellow lawyers and that there is no ground for singling labor lawyers out for censure.

1. Introduction

The recent article by U. S. Senator John F. Kennedy in the JOURNAL[1] gives one view of the labor union lawyers in the United States. Although Senator Kennedy correctly states that his charges are limited to a minority of union counsel, nevertheless the work and accomplishment of the great majority of labor attorneys have been overlooked in the recent criticisms of lawyers. In an article in *Harvard Law School Bulletin*,[2] I once wrote—

> Labor lawyers also suggest that there be a public relations campaign to educate the public about the services of the labor lawyer. Too often the general public, on the basis of guilt through association, criticizes the labor lawyer for the cause he is defending. Although the stigma in being a "labor lawyer" is gradually disappearing, some elements of resentment still exist.

In the light of Senator Kennedy's article and criticisms, it might be well to take a new look at labor union lawyers. Although some labor lawyers as well as tax or corporation lawyers may have violated the canons of the legal profession, it should be noted that Senator Kennedy correctly recognizes that "the problem is not now, and it never has been, that all, or a majority or even a very large minority, of labor lawyers have engaged in improper activities". Nevertheless, Senator Kennedy's criticism has focused new attention on labor lawyers and their work.[3]

2. Clients and Distribution

Of the more than 200,000 lawyers in the United States, only a comparatively small number—five hundred—are labor union attorneys. Of this number approximately fifty lawyers are house counsel for a labor organization. Geographically labor lawyers are distributed along the same percentage lines as all lawyers in the country except in the Far West, where there is a greater concentration of labor lawyers compared to all lawyers, and in the rural Southeastern region where the percentage of labor lawyers is below the percentage figure for all lawyers.

The office setup of labor union attorneys differs considerably from the average lawyer's office organization. Approximately 40 per cent of labor lawyers are partners or members of a firm while only 25 per cent of all lawyers in the country are members or partners of a law firm. Whereas 66 per cent of all lawyers are engaged in a solo practice, only 40 per cent of the labor lawyers practice alone. At the same time there are few large sized labor law firms. Although most large corporations have legal departments with many lawyers on a full time basis, only thirty of the 210 international unions have legal departments or house counsel who devote practically all their time to the labor union's legal affairs.

3. Income

The economics of a labor lawyer's practice ties him closely to his clients. He is confined to the union side of labor relations work, for generally unions will not retain lawyers who represent employers; furthermore, unions are suspicious of lawyers. The reluctance of unions to intrust their affairs to outsiders tends to concentrate their legal business in the hands of a comparatively small number of practitioners with little turnover. If a labor lawyer loses a union client, he is not

1. Kennedy, *Union Racketeering: The Responsibility of the Bar*, 44 A.B.A.J. 437 (1958).
2. 3 HARVARD LAW SCHOOL BULLETIN (1952) *Labor Union Lawyers*, page 11.
3. For several articles on labor union attorneys, see Segal, *Labor Union Lawyers: Professional Services of Lawyers to Organized Labor*, 5 INDUSTRIAL AND LABOR RELATIONS REVIEW (April, 1952), 343; Kovner, *The Labor Lawyer* in Hardman and Neufeld, THE HOUSE OF LABOR (1951) pages 398-9, Segal, *Labor Lawyers*, 14 HARVARD LAW SCHOOL RECORD (April 10, 1952), page 1.

likely to find another, for there are fewer union clients than employer clients. When a single labor local has dealings with a number of employers, it has one lawyer; the employers may divide their legal business among several attorneys.

Most labor lawyers report that they are on retainer from labor organizations and that they often lose out on general practice work, even from union members, because of their label as "labor union attorneys". In addition, they are called upon to do considerable free work for union officials, small affiliated locals and even members. Income-wise, labor attorneys report that litigation and arbitration are more lucrative than consultative and negotiation work.

The financial return for labor attorneys is better than the average for lawyers in general. Whereas the median income for all lawyers in the United States was approximately $7835, in 1954, the median for labor union lawyers was nearly $12,500.[4] Relatively few labor lawyers earned over $20,000 per year, but at the other extreme few labor lawyers earned less than $5,000 per year. Labor lawyers in the Far West and Midwest had the highest median net income, New England the lowest. At the same time, the median net income of $12,500 per year for labor union house counsel contrasts sharply with the $33,500 median for the head of corporate legal departments.

4. Composite Picture of a Labor Lawyer

Based on answers to an eight-page questionnaire sent to all labor lawyers in the country in 1952 under the guidance of the Survey of the Legal Profession here is a composite picture of a labor lawyer:

a. He is about 43 years old, in a partnership, has been practicing law about seventeen and a half years, and has been in the labor field about thirteen years.

b. He has probably had government training, although not necessarily in the labor field.

c. He has a college degree with a major in the social sciences and a law school degree, but has had no course in labor law.

d. He belongs to the local and state bar associations—probably not to the American Bar Association.[5]

e. He is probably on a retainer and nets about $12,500 a year.

f. He probably feels that the stigma attached to being a labor union attorney is decreasing but has not disappeared completely. He has lost general practice because he is a "labor lawyer". And although he is accepted by the unions which resent lawyers generally, he finds that unions still consider labor lawyers as "necessary evils" for emergencies only.

g. Though some public officials in rural communities have an unfavorable attitude toward him, he feels that the courts today treat him fairly.

5. Services of Labor Lawyers

Whereas prior to 1932 the labor lawyer was primarily concerned with injunctions, antitrust and criminal cases, today he performs many valuable new services. Appearances before administrative agencies constitute a substantial part of his practice. He also handles court litigation for unions, arbitration cases, negotiations, approval and administration of collective bargaining agreements, interpretations of union constitutions, and advice to the unions relative to strategy, rights and obligations. He also drafts legislation and interprets the many new labor laws for the unions. He must be familiar with a great mass of specialized background material in the labor relations field.

In addition he does considerable "non-legal" work such as preparing economic and statistical data, drafting speeches for union officials, speaking before labor and other groups, writing articles and other public relations work. To the general public, the labor lawyer is often the public representative of the union, for he appears at lectures, debates, forums, and before legislative and administrative committees. Labor lawyers now have become a vital part of the functioning of labor unions.

With approximately 125,000 collective bargaining agreements in force today setting the "private law of the plant", problems occur frequently involving the interpretation of the terms of the agreement by arbitration. Approximately 30 per cent of all labor lawyers regularly do arbitration work and another 40 per cent infrequently do such work. At the same time grievance work prior to arbitration is seldom done by attorneys.

The most important work in the labor lawyer's field, collective bargaining, is the "preventive phase" of labor law, designed to stabilize the employment relationship without resort to economic force. It involves the relation of groups of people, both between the group and outsiders and between the group and the individual members of which it is composed. Unlike the problems involved in aggregations of property, this highly personalized field requires a different approach. Although the labor lawyer and the union must know the federal and state law relative to strikes and picketing, as well as the rights and duties of the parties under the labor relations laws, ordinary legal sanctions are often unavailable, for the highly competitive interests between employers and employees and between groups of employees are scarcely amenable to the ordinary processes of adjudication. The labor lawyer must understand the practical problems, relative to seniority, job security, pensions, discharges, wage structures and piece rates, management prerogatives, insurance, grievance and similar clauses, for voluntary adjustments and negotiations are more important than litigation in the emotional and dynamic field of labor relations.

6. Stigma and Attitudes

More than 40 per cent of all the labor lawyers reporting feel that there is a stigma attached to being a labor lawyer. The stigma is felt by almost all labor union attorneys in the Southeast and Southwest, while in New England and the Far West, a smaller percentage feel it. The stigma results from the association of labor's

4. For an analysis of the income of lawyers, see Segal and Fei, *The Economics of the Legal Profession*, A.B.A.J. (1953); Segal *A New Look at the Economics of the Profession*, 43 A.B.A.J. (1957); Liebenberg, *Income of Lawyers in the Postwar Period*, Survey of Current Business (1956).

5. This situation has changed in the past five years, for the American Bar Association's Section on Labor Relations Law which now numbers 1100 and is only eleven years old has recently attracted many union attorneys based on its increased program and equal representation on the Council.

cause—the strike—which the attorney is defending, with the lawyer himself. It also results from long existing prejudices, the public's reactions to many labor unions and strikes, and the unfavorable press received by unions.

Most labor lawyers report that the stigma had been gradually disappearing until recently. In fact, with the increasing importance of labor unions in politics, some labor lawyers are finding that the successful labor movement can offer substantial support to individual political ambitions; many congressmen, senators and governors were at one time counsel to unions and many influential lawyers have taken an occasional case for a union because of politics. In addition, many labor lawyers report that honors have been bestowed upon them, such as honorary membership in labor organizations, elections to law school alumni and bar association councils, appointments to civic, social and professional groups and committees, labor-management boards and some political appointments.

Labor unions, too, share in the dislike for the labor lawyer. Furthermore, the lawyer's role is still at a minimum in the internal affairs of the union. These attitudes are the result of several factors. First of all, labor unions have a historical resentment against lawyers based on the injunctions in labor disputes which were obtained by company lawyers and granted by judges. Secondly, unions tend to judge all lawyers by the bitter experiences they have had with some employers' lawyers in collective bargaining. Lawyers are prone to be technical and legalistic even in a field where basic human relationships are the dominant feature. Some labor unions still harbor the old resentment against the "outsider", the "intellectual", the white-collar worker, and the theorist—an antagonism enhanced in the case of a few old line labor leaders by jealousy of their own power and prestige. Finally, the legal problems and restrictions raised by the labor attorney run counter to the policy favored by the union officers, who then tend to blame the attorney rather than the law.

7. Suggestions for Improvement of Labor Law Practice

A. Criticisms

Labor lawyers offer several specific suggestions for the various groups involved for the improvement of labor law practice. First, for the labor unions, the labor lawyers suggest that the unions should be more educated to the services available to them from labor lawyers. In particular, they feel that unions do not sufficiently take advantage of the services of lawyers in the preparation of contracts, negotiations and arbitrations, and in securing advice relative to "due process" and internal affairs and "preventive law" rather than relying on lawyers as necessary "evils" for emergencies only.

In addition, many labor lawyers suggest that the unions should be educated about the monetary value of legal services; they feel that the unions are not prepared to pay adequate fees for labor law work. They also suggest that unions should provide for a closer relationship between the general counsel for international unions and the field attorneys. In addition, many labor attorneys complain that labor clients tend to give them either a distorted or incomplete picture of the facts in a given case.

Labor lawyers also criticize labor lawyers themselves. First, they censure some of their brethren for overcharging labor organizations. Secondly, they also state that some labor lawyers should be better trained in labor law and in the history and philosophy of the labor movement. Finally, they recommend that some labor lawyers show more independence in advising their clients; the lawyers also should obtain a complete picture of the case as well as have sufficient briefing before the hearing.

Labor lawyers offer some suggestions relative to attorneys on the employer's side. First of all, they claim that many lawyers often are too legalistic and technical in labor relations; they also state that some employers' attorneys foment trouble and prolong disputes to obtain larger fees. They suggest that collective bargaining can be improved by more attention to careful drafting and the avoidance of concealed reservations by company lawyers.

Closer co-operation and discussions among labor lawyers as well as among all lawyers engaged in labor relations are also recommended by labor attorneys. Some bar associations, according to the labor lawyers, have failed to perform their functions by neglecting labor relations work. Many labor attorneys feel that a separate bar association for labor lawyers should be established.

B. Criticisms by Senator Kennedy

Senator Kennedy compares some labor lawyers today with the corporation lawyers almost a quarter of a century ago who were indicted by Supreme Court Justice Harlan Fiske Stone. At that time Justice Stone claimed the nation's lawyers had to bear a large share of the responsibility for the chaos their harmful corporate activities had created by the beginning

Robert M. Segal was graduated from Amherst College and Harvard Law School. He specializes in labor law in Boston, and is a past chairman of the Labor Relations Law Section of the American Bar Association. He is author of various articles on the economics of the legal profession and on labor law and lawyers. He was a consultant for the Survey of Legal Profession and wrote its report on "Labor Union Lawyers".

of the 1930's and for the always unwelcome effort to impose governmental regulation where private self-regulation had failed. Today Senator Kennedy calls on the legal profession to cleanse its ranks and restore itself to a true position of leadership in our society.

In my opinion, Senator Kennedy proves too much. The Bar has a true position of leadership today in our society, as evidenced by the fifty-nine lawyers serving in the Senate with Senator Kennedy, the 234 lawyers in Congress, the 3519 lawyers listed among the 51,000 persons listed in *Who's Who* and the many lawyers in prominent government, industrial and civic positions. The Bar needs no defense at this time to show its position of leadership.

The labor lawyer's influence in our economy is hardly comparable to the role of the corporation lawyers in the past or present. Furthermore the labor lawyers, unlike the corporation lawyers, have favored liberal social and economic legislation. Unlike corporation lawyers who become officers and heads of corporations, a labor lawyer rarely becomes head of a union. By and large, labor lawyers are probably less tolerant of injustice and wrongdoing than any other segment of the community. In addition, the labor lawyer's role usually is at a minimum in the internal affairs of the union where he is treated as a "necessary evil".

At the same time it should be remembered that lawyers including labor lawyers have to meet character and examination prerequisites, take the lawyer's oath and then meet the Canons of Professional Ethics. In twenty-five states with integrated Bars, membership in the association is a prerequisite to the right to practice law. All lawyers are subject to disbarment proceedings, reprimands, suspensions, court discipline and many other disciplinary actions far stricter than apply to senators or legislators. Although Senator Kennedy speaks approvingly of the AFL-CIO Ethical Practices Codes[6] and calls for the Bar to adopt more specific regulations governing the practice of the profession, the Bar probably has more stringent codes and standards and grievance committees than any other group, even though a re-evaluation of the codes may be needed.

Insofar as lawyers breach their trusts, violate the Canons of their profession, engage in illicit deals or illegal transactions, they should be punished whether they are corporation or labor attorneys. Lawyers who use their position to promote their own interests with their client's funds are also open to censure. Lawyers who represent competing interests in the same transaction without full disclosure of all the facts to all parties involved are also to be condemned. These criticisms by Senator Kennedy are valid and apply to all unscrupulous lawyers not only solely to the minority of misguided labor lawyers he has singled out in his article.

At the same time, the existence of a very small minority of unprincipled lawyers should not become an indictment of the entire legal profession with its 200,000 lawyers or of the great majority of labor lawyers. Their work and contributions are self-evident. Insofar as Senator Kennedy suggests reexamination of the Canons of Ethics, it should be recalled that Judges Phillips and McCoy in their 1952 report for the Survey of the Legal Profession entitled, *Conduct of Judges and Lawyers*, stated at page 204:

> The Survey has disclosed the unquestionable need for a reconsideration of the Canons of Professional Ethics as an authoritative statement of the standards of professional conduct to which all lawyers should adhere. As they stand, many are only given lip service, while others are more honored in the breach than in the observance.

It should be recognized that Senator Kennedy's criticism is levelled against all lawyers. First of all, he considers all lawyers their brothers' keepers on matters of professional conduct, and he states that "the fact that one has not personally profited from impropriety does not absolve him of responsibility for impropriety". Secondly, he attacks the criminal lawyer and seems to attack the lawyer who defends any person accused of any crime. He seems to imply that the legal profession does not condemn unscrupulous lawyers or "mouthpieces" who show no independence or professional integrity. Then he lumps all his criticisms of lawyers against the labor lawyers and he condemns them for various improper activities, including representing management and labor, setting up independent unions, and representing the union officials before legislative committees.

In his criticism of labor lawyers, Senator Kennedy lists lawyers who represent management in the morning and so-called unions or union leaders in the afternoon, and who draw up "sweetheart" contracts.[7] This criticism is not applicable to the typical labor union lawyer, for as noted above, the labor union lawyer is stigmatized and does no work for employers and in fact is limited in his practice to labor union work. He loses clients and work because of the label of being a "labor union lawyer".

In addition, Senator Kennedy criticizes labor lawyers "who organize 'paper' locals, sham employer associations, so-called independent unions and fake health and welfare plans". Again this is not a valid criticism of the true labor union attorneys who have little or no relationships with independent unions or employer associations.

Senator Kennedy's article seems to condemn all labor union attorneys who defend labor leaders called before the McClellan Committee. His criticism also implies that lawyers should not advise their labor clients to invoke the Fifth Amendment.[8] In fact he raises the same point as to conflict of interests for labor lawyers which the late Senator McCarthy made relative to counsel for the union representing a labor union official called in the hearings conducted by the Senate Govern-

---

6. It is interesting to note that in spite of these codes which the Senator approves as guides for the Bar to adopt specific codes to avoid legislative action in the legal field, the Senator is sponsoring labor legislation covering the very areas covered by these codes. See S. 3454 and S. 3751 introduced by Senator Kennedy. It is also interesting to note the lack of such ethical codes for government officials and legislators. See NEW YORK TIMES, July 6, 1958, page 8E.

7. Not all "sweetheart" contracts are necessarily bad. Although a contract may be classified as a "sweetheart contract" (because it was negotiated from the top down), it may well contain important benefits for all parties concerned—the employees, the company and the union and may be the best solution to a troublesome problem for all parties involved who approve the terms after full disclosure.

8. For a detailed analysis of the use of the Fifth Amendment see Griswold, THE FIFTH AMENDMENT TODAY (1955).

ment Operations Committee;[9] nevertheless after that hearing, the United States Court of Appeals for the District of Columbia Circuit in *Brewster* v. *U.S.* (41 LRRM 2831) reversed the conviction for contempt of Congress and held that the committee was acting beyond the scope of its authority, as originally claimed by the union attorney.

The mere fact that a union official or any other person is called before a congressional committee does not make him guilty. He is not only entitled to able counsel but to all his constitutional rights, including a presumption of innocence. The union itself may be in jeopardy by a legislative committee which is purportedly gathering material for legislative action affecting the unions and the union attorney may be the most able counsel for the union and its witnesses. As the *New York Times* recently pointed out in an editorial (June 30, 1958), "The experience of Anglo-Saxon Courts over many centuries has established the principle that there is a very thin connection between justice and the usual kind of hearsay evidence. Congressional Committees in this country have not been so scrupulous". Unfortunately some members of legislative committees not only disregard "due process" but also have misconceived their legislative function and have concluded that their sole task is to uncover wrongs against the unions and, in a sense, to prosecute the officers. Furthermore unlike a criminal court case where the union official has been indicted, is prosecuted by a prosecutor and is being tried by a judge and jury for stealing funds from the union, and where the union counsel paid for by union members should not defend the official, a legislative inquiry is merely seeking for information (sometimes in a reckless and irresponsible manner) and is not a judicial court with its decorum, procedure and basic safeguards to the individual; often times no evidence of shady practices or other illegal acts by the union official have been brought out when the official is first called in to the legislative inquiry where the committeeman acts simultaneously as grand jury, prosecutor, judge and trial jury. At a later stage, a conflict of interest may appear and at that stage the lawyer may have to retire.

This problem of conflict of interests was recently presented to a committee of the Philadelphia Bar Association and their first opinion runs contrary to Senator Kennedy's implications and criticisms. They concluded,

> While the attorney at this stage of the proceedings is free to, and indeed must, presume his client innocent, recent experience indicates that evidence before the committee may show improper actions on the part of the officers of a union. Such evidence may give rise to an actual conflict of interests between the union and its officers.

After the evidence had been presented before the committee, the Philadelphia Bar's Professional Guidance Committee did point out that a conflict of interests may be present at that time in the case involving the attorney who represented the union and the officials of the labor organization under investigation. The Guidance Committee stated,

> We have examined the notes of the sworn testimony before the U. S. Senate Select Committee on Improper Activities in the labor or management field, which indicate that a conflict of interest may arise between the particular labor union and certain of its members, both of whom you represent. . . . It is our unanimous opinion that you are now in a situation where you cannot represent both the labor union and the members involved in the pending Senatorial proceedings.[10]

With regard to this problem of conflict of interests as suggested by Senator Kennedy, does a lawyer as an officer of the court who represents a trade association furnishing legal services to its members generally, or as to a specified controversy find himself in a conflict of interests situation?[11] Is it a conflict of interest for a lawyer to defend a criminal whom he believes to be guilty? Is it a conflict of interest for a part-time judge or a congressman or senator to continue to practice law? Is it a conflict of interest for a lawyer to practice before judges whom he appointed to the Bench when he was governor? What about representation of an injured person by a lawyer suggested by the defendant's insurance company? Is it a conflict of interest for the corporation counsel to defend the corporate directors in a minority stockholder's suit? Is it a conflict of interest for the bank lawyer to be paid by the purchaser of a house who is taking a mortgage from the bank? Is it a conflict of interest for the insurance investigator who is also a lawyer to go out and have the injured victim sign a release without a lawyer? Is it a conflict of interest for a tort lawyer to be a representative on a legislative committee whose funds are derived from taxes on insurance companies with which he has legal business? Is it a conflict of interest when the union members know all the facts about the alleged misdeeds of their officers and still want the union counsel to defend their officers?[12]

What about such activities as a large employer furnishing services to its employees in respect to their individual affairs, with or without a periodical charge for the services; or the trust department of a bank furnishing legal services to its customers; or an organized group with common legal interest such as property owners subjected to a tax of doubtful constitutionality?[13]

The above practices and problems suggest that there is indeed a need for some implementation, further clarification and even revision of Canon 6 and the other Canons of Professional Ethics, as originally promulgated by

9. See page 131 of Joint Appendix to Brief filed in *Brewster* v. *U.S. of America* (No. 14.145) in United States Court of Appeals for the District of Columbia Circuit.

10. BNA Labor Relations Reporter, 41 LRR 511 and 530; According to BNA Labor Relations Reporter, "the Philadelphia decision that there is a potential conflict is the first one known to have been handed down".

11. Yet this practice is a violation of Canon 35 although nearly 16 per cent of all lawyers surveyed considered this not unprofessional while only 28 per cent considered this unprofessional. Phillips and McCoy, *op. cit.*, page 62.

12. Canon 6 provides that it is unprofessional for a lawyer to "represent conflicting interests, except by express consent of all concerned, given after a full disclosure of all the facts".

13. These are all contrary to Canon 35, which states that the professional services of a lawyer should not be controlled or exploited by any lay agency which intervenes between the lawyer and his client. Disregard of this canon also gives rise in most cases to violations of Canon 27 and possibly Canon 34. Yet in spite of this, a group of lawyers who answered Survey questionnaires believed that this was not unprofessional. See Phillips and McCoy, *op. cit.*, page 62.

the American Bar Association in 1908. At the same time, as Judges Phillips and McCoy pointed out,

> The Bar is competent to do the work that is needed. The methods and accomplishments of the American Law Institute suggest an approach to a solution of the problems involved. There must be an understanding of the need for an authoritative statement of the ideals and standards of the profession with a change from emphasis on professional ethics. Perhaps a Restatement of Professional Standards should replace the conventional and demonstrably inadequate Canons or Codes of Professional Ethics. Through such an approach much that is now found in the Canons would be retained, some changes would be made, and much would be added that is new. The inevitable result of such a Restatement would be a better understanding on the part of the lawyers, the judges, and the public of the importance of the legal profession to the body politic.[14]

8. Conclusions

Although unscrupulous lawyers of all types (whether they be tax, corporation or labor lawyers) are to be condemned, nevertheless lawyers in general perform many valuable services for their clients, the government and the community. Labor lawyers also made valuable contributions as Senator Kennedy recognizes when he writes,

> The legal profession as a whole has never been as thoroughly committed to the service of labor as, a generation ago, it was to business. Nevertheless, in the thirties and after, an increasing number of able law graduates were drawn to the growing labor movement by a sense of adventure and service. There was, I think, idealism and dedication in the election of many young men to "go into" the field of labor law —and properly so. It meant service to the many and not the few, to the cause of economic justice and a better way of life. For the overwhelming majority of those who have pursued distinguished careers in this field, this idealism has remained bright and untarnished to this day.

At the same time, it should be recognized that lawyers who do not show independence in advising their clients lose professional standing and prestige. This is an accepted principle in the legal profession and was one of the criticisms made by labor lawyers of some of their brethren in 1952.[15] There is no need for any law or Canon of Ethics in this respect. Insofar as conflicts of interest are concerned, there may well be a need to re-evaluate existing canons or to issue some clarifying regulations to cover many new problems. But at the same time the old cry of "there ought to be a law" is certainly not applicable to the legal profession in general or the labor Bar in particular.

Although unions (as well as Senator Kennedy) have been critical of labor lawyers, unions should also be grateful for the work of labor and liberal lawyers who have rendered important legal services to the labor movement or aided in its development. Unions owe much to their labor lawyers, who have defended the rights of the labor movement and who have won important victories for labor organizations. In addition, they are indebted to the liberal lawyers and law professors who worked with them, especially in drafting labor legislation, when they could not afford to pay the customary fees for good legal talent. Furthermore, the work of some of the five hundred government lawyers in administering the federal laws protective of labor's rights has also been an important form of legal contribution to the labor movement, for not only did they win judicial approval of the new regulations and laws, but they are daily enforcing legal rights for the laboring man.

The labor lawyer has an increasingly important role, for he exercises a growing influence on the actions and policies of a powerful force in our economy. His place in the dynamic labor movement is securely fixed by the expanding functions he performs and by the way they are performed.[16] His legal training can help to make collective bargaining a more successful means of settling labor problems than resort to economic force. Since the nature of unions has molded a usually narrow, intimate attorney-client relationship, the labor lawyer is in a position to make valuable contributions to the field of industrial relations and labor law, to "due process" in internal union problems, and to the welfare of the union, its members, and the community, and to help dispel some of the antagonism of labor and the public against lawyers and the legal profession.

---

14. Page 205. In fact a committee of the American Bar Association is currently studying revisions in the Code of Ethics.
15. See *supra*, page 49.
16. Contrast this with the difficulty unions had as late as 1937 in securing legal services. In that year, the United Shoe Workers Union strikers at Lewiston and Auburn, Maine, could not obtain local counsel, while the Steel Workers Organizing Committee had to pay premium prices for lawyers to defend its members against criminal charges in Pennsylvania and Ohio towns. (See Hardman and Neufeld, *op. cit.*, page 400.)

Proceedings of the House of Delegates:

Los Angeles, August 25-29

In this issue we present a full summary of the proceedings of the American Bar Association's governing body, the House of Delegates, during the 1958 Annual Meeting in Los Angeles. The House is composed of representatives elected by Association members in each state, representatives of all state and territorial bar associations and many larger local associations, as well as a number of other organizations of the legal profession.

First Session

The House of Delegates of the American Bar Association held five sessions during the 1958 Annual Meeting in Los Angeles, beginning at 2:00 P.M. on Monday, August 25, and adjourning at 10:55 A.M. on Friday, August 29. The sessions were held in the Pacific Ballroom of the Statler Hilton Hotel with the Chairman of the House, James L. Shepherd, Jr., of Houston, Texas, presiding.

After the roll call at the beginning of the First Session, Glenn M. Coulter, of Detroit, Michigan, the Chairman of the Committee on Credentials and Admissions, announced that his Committee had considered the roster of the House as read on the roll call and had approved it. He then introduced eight new members of the House: J. Edward Thornton, of Mobile, representing the Alabama State Bar; Guy Richards Crump, of Los Angeles, a former Chairman of the House of Delegates; Charles D. Harris, representing The Bar Association of Baltimore City; John W. Cummiskey, of Grand Rapids, representing the State Bar of Michigan; Luther M. Bang, Austin, representing the Minnesota State Bar Association; Paul Carrington, of Dallas, Texas, Assembly Delegate; Robert T. Barton, Jr., of Richmond, representing the Virginia State Bar; and Charles L. Goldberg, of Milwaukee, representing the State Bar of Wisconsin.

The House then voted its approval of the record of the last meeting and adopted the final calendar as the order of the day.

Report of the President

Reporting as President of the Association, Charles S. Rhyne, of Washington, D. C., mentioned briefly the most important developments during his year in office, including Law Day—U.S.A., the continued growth of Association membership and the increasing importance of atomic energy to the lawyer. Mr. Rhyne spent a large portion of his report discussing his trip to the Soviet Union during the summer with other leaders of the Association. He said that the visiting Americans had attempted to see lawyers and judges in the Soviet Union rather than government officials, and described his impression of the Russian system of justice: "It is a judicial system in form, but the substance simply is not there. It is used in large part to help the Communist Party control the people of Russia. . . . A Communist probably gets a more severe brand of justice if they let him be tried at all, and they take care of their boys among their own organization, but if they let him go to court, he is considered to be one of the elite of Russia, and they will probably throw the book at him." Mr. Rhyne added that "I feel that the lawyers and judges that we talked to were intelligent men, some of them very outstanding men, and they understood us when we talked about the rule of order and how the administration of justice operates in our country. But Communism is firmly entrenched, and in spite of little evidences of discontent here and there, we saw no evidence of any violent explosion to throw it off, and if they did throw it off, those people who have only lived under the Tsars and under Communism did not show any evidence of any ideas about any other type of government." Mr. Rhyne said that he was impressed by the friendliness of the people of Russia and by their apparent passion for peace. ". . . you have to go there to really understand Russia", he said. "There is a feeling that comes over you that those people are living almost in a tremendous concentration camp. It cannot be described in words how completely the Communist system controls them." He expressed the hope that more Americans would visit Russia. "They need to know about us", he declared. "They have copied us in everything else, and I cannot think of anything more wonderful than to get over there and tell them about our system of government and the individual rights that exist here and have them start copying them also."

Election of Officers

The House then elected new officers and members of the Board of Governors. Under the Association's Constitution, officers and members of the Board are nominated by the State Delegates at the Midyear Meeting of the House and are elected at the Annual Meeting. Ross L. Malone, of Roswell, New Mexico, was elected President; Sylvester C. Smith, Jr., of Newark, New Jersey, was elected Chairman of the House of Delegates for a two-year term; and Joseph C. Calhoun, of Media, Pennsylvania, and Harold H. Bredell, of Indianapolis, Indiana, were re-elected Secretary and Treasurer respectively. New members of the Board of Governors, chosen for three-year terms, are Robert K. Bell, of Ocean City, New Jersey, from the Third Circuit; E. Dixie Beggs, of Pensacola, Florida, from the Fifth Circuit; and Walter E. Craig, of Phoenix, Arizona, from the Ninth Circuit.

National Press Photographers Association

Chairman James L. Shepherd, Jr., of Houston, Texas, presiding over the House of Delegates during the Los Angeles meeting.

Report of the Treasurer

Mr. Bredell then gave the Treasurer's Report, saying that the income available for the fiscal year ending June 30, 1958, to the general fund had increased by $251,000 as compared with increased expenditures of $203,000. He reported an increase in the general fund surplus of $104,000 to a total at the end of the year of $506,000. He reminded the members of the House, however, that this is still only 50 per cent of the annual cost of operation of the Association, and he said that it was intended to continue to build up the general fund surplus at least until it reaches 100 per cent of the annual expenditure.

Budget Committee

Vincent P. McDevitt, of Philadelphia, Chairman of the Budget Committee, said that the budget income for the new fiscal year ending June 30, 1959, has been estimated at $1,033,500, the same as was estimated for fiscal 1958. Against this sum, $1,050,000 has been appropriated — an over-appropriation of $16,500. "We are confident, however," Mr. McDevitt said, "that if the respective chairmen continue to practice the same economy as they have in the past, the Association will continue its operations on the same sound basis."

Debate Begins on Canon 35

The House then turned to an item of unfinished business, left over from its Midyear Meeting in Atlanta—the question of revision of Canon 35 of the Canons of Judicial Ethics, which forbids the taking of pictures in courtrooms and prohibits broadcasts and telecasts of courtroom proceedings. There has been considerable comment in the press calling for a repeal of this Canon, and after a study of the problem by a Committee of the American Bar Foundation, at Atlanta the Board of Governors recommended a revision of the Canon. The House debated the question at length in Atlanta, hearing arguments from representatives of the press and radio and television industries as well as arguments in opposition to relaxation of the standards prescribed by the present Canon. Action on the proposed restatement of the Canon was deferred to this meeting so as to give more time for study of the problem.

When the House reached the question on its calendar, Secretary Calhoun rose to speak for the Board of Governors. The Board urged a further delay and the appointment of a Special Committee of nine members to consider the matter further and make such surveys as seemed necessary to obtain reliable data on the issues involved. "The fundamental objective of the Committee and of all others interested must be to consider and make recommendations which will preserve the right of fair trial", the Board concluded.

Albert E. Jenner, Jr., of Chicago, told the members of the House that the American College of Trial Lawyers had been polled on the question, whether they favored or opposed "a program of tests, experimentation and research calculated to determine without question the effect of coverage of courtroom proceedings by radio and television." Mr. Jenner said that fifty-five were in favor of that proposal and 308 opposed, according to the poll. "The American College of Trial Lawyers on that question is opposed to further delay by vote of 85 percent against 15 per cent", Mr. Jenner said, adding, however, that the question on which the members of the College were polled was not the exact question now put to the House by the Board of Governors.

The House then voted to refer the matter to a special committee of nine as suggested by the Board of Governors.

Awards to Media Committee

Richard P. Tinkham, of Hammond, Indiana, Chairman of the Special Committee on Awards to Media of Public Information, reported briefly for that Committee. Mr. Tinkham said that his Committee had been appointed to give recognition to the activities and efforts of the media of communication and entertainment on behalf of the lawyer and the administration of justice. Seven awards had been decided upon, he said, and the announcement of the winners would be made at the Annual Dinner on Thursday evening, August 28. On Mr. Tinkham's motion, the House voted to continue the Special Committee.

Co-operation with Friendly Nations Committee

Robert G. Storey, of Dallas, Texas, Chairman of the Special Committee on Co-operation with Legal Profession of Friendly Nations, described the work of that Committee, noting that it had arranged for the presentation of a library of 2000 volumes to the Korean Legal Center and that many other books have been sent to friendly countries all over the world. The Committee also gives advice and suggestions to lawyers travelling abroad and arranges for them to meet lawyers in the countries in which they are visiting. Dean Storey said it was the opinion of the members of the Committee that it should be constituted as a Standing Committee so that it would be able to give more emphasis to the implementation of the rule of law.

The House voted to continue the Special Committee.

Committee on Federal Judiciary

Roy E. Willy, of Sioux Falls, South Dakota, delivered the report of the Committee on Federal Judiciary in the absence of Bernard G. Segal, of Philadelphia, the Committee's Chairman. Mr. Willy called attention to two phases of this Committee's report—one that the Committee is receiving "more and more consideration from the Attorney General and from the Judiciary Committee of the Senate in connection with the confirmation of appointments to the Federal Bench". He also cited the extreme need for enactment into law of the Omnibus Judgeship Bill, which was passed by the House of Representatives during the 85th Congress, but failed to be brought up in the Senate before adjournment.

Committee on Lawyer Referral Service

The report of the Committee on Lawyer Referral Service was given by the Chairman, Harry Gershenson, of St. Louis, Missouri. Mr. Gershenson said that there were now 168 Lawyer Referral Services in the country as compared with eighty a year ago, and that they were handling about 150,000 cases a year. The most important event of the year in the field, he said, was a suit by a Florida lawyer to enjoin the Jacksonville Lawyer Referral Service on the ground that it was unethical. The Florida Supreme Court had reversed a lower court, completely vindicating the service, Mr. Gershenson said, but if the lower court's opinion had stood it might have done much damage to the work done by the Lawyer Referral Services. He emphasized the fact that Lawyer Referral Service is not low-cost legal service. "We want to stop that thought, particularly on the part of the lawyers", Mr. Gershenson said. "It is a rendition of a service by lawyers to those who need lawyers."

Committee on Legal Aid

The report of the Committee on Legal Aid was given by Chairman William T. Gossett, of Dearborn, Michigan. Mr. Gossett said that there are now Legal Aid organizations in all but eleven of the 106 cities in the United States over 100,000 population, and he reported that last year, 316,000 civil cases and 226,000 criminal cases were handled by Legal Aid. Nevertheless, he indicated that the situation was not altogether satisfactory, especially on the criminal side of the picture. There are, for example, public defenders in only thirty-seven of the cities having over 100,000 population. "We are getting organized to handle that", Mr. Gossett said, "but the success or failure of our effort in the community is based upon the strength and the attitude of the local bar association." He cited the example of the situation in Norfolk-Portsmouth, Virginia, where the local Bar had actively resolved, "after due deliberation, not to inaugurate legal aid".

Mr. Gossett said that it is the opinion of some that legal aid is socialistic, and expressed astonishment that any lawyer could hold that notion. Legal Aid is a bulwark against socialism, Mr. Gossett declared. "If private service does not work, the government does step in, as it has in England." "We must impress upon them the fact that Legal Aid is not another charity", Mr. Gossett concluded, "but a *sine qua non* of our whole system of jurisprudence."

Amendments of Constitution, By-Laws

The House then began its consideration of proposed amendments to the Constitution and By-Laws of the Association. These amendments were published in the July issue of the JOURNAL in accordance with Article XIII of the Constitution (see 44 A.B.A.J. 667). The amendments were drawn up by the Committee on Rules and Calendar and the Committee on Scope and Correlation of Work. They were presented to the House by Sylvester C. Smith, Jr., of Newark, New Jersey, the Chairman of the Rules and Calendar Committee. The first proposal amended Articles VII, VIII and IX of the Constitution and Article VIII of the By-Laws so as to create the office of President-Elect. In explaining the two Committees' reasoning on this proposal, Mr. Smith pointed out that under the old system, the State Delegates nominated a candidate for President in the spring, with the further provision (which has never been invoked) for other nominations by petition. The result is, Mr. Smith said, that the man nominated by the State Delegates does not know until a very short time before the Annual Meeting whether or not he is going to have opposition and as a result he is hesitant to start making appointments to various committees. The creation of the office of President-Elect would eliminate the problem, Mr. Smith ex-

plained. He then moved adoption of the amendment, and the proposal was carried by the necessary two-thirds vote of all members of the House.

Mr. Smith's second proposal, which was also carried by the necessary two-thirds vote, made the Chairman of the Conference of Chief Justices a member of the House of Delegates. This was done by an amendment to Article VI of the Constitution.

The third proposal of the two committees aroused considerable objection. The proposal was to amend Article IV of the Constitution so as to eliminate the so-called "bullet voting" for Assembly Delegates. There are fifteen Assembly Delegates in the House of Delegates, elected for three-year terms by ballot of all Association members registered at an Annual Meeting. The terms are staggered so that five Assembly Delegates are elected each year. The "bullet" balloting consists of voting for one candidate only instead of five. The proposed amendment would have done away with this practice by requiring Assembly members to vote for five candidates.

Robert G. Storey, Jr., of Dallas, Texas, summarized the reaction of those opposed to the change. The bulk of the new membership in recent years, Mr. Storey said, has been members of Junior Bar age (under 36), and about 90 per cent of this year's 7,000 member increase came from the Junior Bar. "I think the younger members of the Bar are to be commended, frankly, for finding a loophole in these by-laws so that they can increase their representation in this body", said Mr. Storey. Moreover, he argued, some Assembly members might know only one candidate for Assembly Delegate and would not want to cast an unintelligent vote for four others. The proposed change, Mr. Storey declared, was resented by the younger lawyers because they felt that it was an attempt to cut down their representation in the House of Delegates.

Edward G. Knowles, of Denver, Colorado, a member of the Scope and Correlation Committee, said that the two Committees had given thorough study to this proposal. "The matter of voting for only a single candidate, and thereby piling up a great lead for some one candidate, is a very destructive thing", he said. "The nominees come from all over the country, and they represent different areas and they should be given thorough consideration. I think anybody, by making a few inquiries, can know right from the start whether the people who are nominated are the ones he would like to see as Assembly Delegate."

National Press Photographers Association

President Malone receives congratulations on his election during a session of the House of Delegates.

Albert E. Jenner, Jr., of Chicago, remarked that the Junior Bar Conference is a Section of the Association, and as such has a Delegate in the House.

Martin J. Dinkelspiel, of San Francisco, added that an Assembly Delegate is supposed to represent the whole membership, not the Junior Bar Conference.

The House then voted, and the vote was 144 in favor of the proposal, but this was short of the 160 two-thirds majority of the entire House required to amend the Constitution, and accordingly the amendment failed.

Mr. Smith then presented his next proposal to amend the Constitution. This proposal dealt with affiliated organizations and it changed the requirements for eligibility to be represented in the House of Delegates. The old requirement was that "a national organization in the legal profession" 25 per cent of whose members were members of the American Bar Association, subject to approval of the House of Delegates, might send a delegate to the House. The Committees proposed to change this requirement so that the minimum requirement for an affiliated organization is that it have a membership of at least 1000, 50 per cent of whom are members of the American Bar Association. The terms of office of delegates from such organizations were set at two years. Mr. Smith said that this proposal was made to keep the House a representative organization of the legal profession.

When Mr. Smith had finished explaining the proposed amendment, Edward L. Cannon, of Raleigh, North Carolina, proposed that action on this and the remaining constitutional amendments be postponed. "It appears from the last vote that it would be futile to try to go into any of these amendment because there seem to be so many absences from the House", he declared.

Gerald P. Hayes, of Milwaukee, Wisconsin, agreed with Mr. Cannon. "There is no sense in voting on a thing if you don't have enough members here

to start off with in accordance with the requirements of the Constitution", he said in moving that action on the constitutional amendments be deferred until the following morning.

Roy A. Bronson, of San Francisco, California, moved as a substitute that the remaining constitutional amendments be made a special order of business for 11:00 o'clock on the following morning. This motion was put to a vote and carried.

Franklin Riter, of Salt Lake City, Utah, then moved for a reconsideration of the proposal to outlaw "bullet balloting" for candidates for Assembly Delegate. "I was one of those who voted in the negative, and I move for reconsideration in the morning" he stated.

A vote was taken on this motion and it was carried. (The proposed amendment was approved when it was put to a vote the second time. See page 1105 *infra.*)

Mr. Storey objected that the motion to reconsider required a two-thirds vote of the entire House, but the Chair ruled that it required only a two-thirds vote of those present.

Mr. Smith then proceeded to present the proposed amendments to the By-Laws which can be amended by a majority vote. He moved an amendment to Article X of the By-Laws, the effect of which was to make the Special Committee on Traffic Court Program into a Standing Committee.

This motion was put to a vote and was carried without debate.

Mr. Smith then moved another amendment to Article X of the By-Laws, this one to abolish the Standing Committee on Civil Service. He explained that the activities of this Committee were not the sort on which lawyers could speak with any more authority than laymen. "We believe that this is a Standing Committee which does not serve the purposes of the Association and that it should be eliminated", he said.

Fanney N. Litvin, of Washington, D. C., the Chairman of the Civil Service Committee, rose in opposition to the amendment. She offered a substitute, the effect of which was to continue the Standing Committee but to modify its scope so that it would be concerned with civil service "laws, decisions and practices . . . as they affect lawyers in the service of the State and Federal Governments". There was a proposal in Congress, Mrs. Litvin told the House, to put some lawyers in the government service under a Federal Practices Act, making a career service that would in effect take lawyers out of civil service. Passage of this might take several years, said Mrs. Litvin, but even if passed "there will still be a continuing need for study and recommendation on matters which would pertain to the federal career service for lawyers".

Mr. Barrett, the Chairman of the Scope and Correlation Committee, opposed Mrs. Litvin's substitute motion. His Committee had been studying the various Association Committees for more than a year, he said, in order to determine which could be eliminated without serious effect upon the functioning of the Association. The Civil Service Committee had been inactive for some time, he went on, and there was divergence of opinion among the members of that Committee of what it should be doing. "We recognize that there is probably need for a complete revision of the Federal Civil Service System, but we do not believe that a voluntary Committee of this Association can give the kind of study that would be necessary to completely overhaul the Federal Civil Service System", he said.

John W. Cragun, of Washington, D. C., rose in defense of the Civil Service Committee, and in favor of Mrs. Litvin's substitute. "The productional position of a lawyer in government is certainly a serious matter, as the great increase in government regulations and control brings more and more members of this profession into government employment. It needs the consideration of a Committee of this Association", Mr. Cragun declared.

In reply to a question put by Charles H. Burton, of Washington, D. C., Mrs. Litvin said that the appropriation for the Civil Service Committee was $200 a year, and that not all of this had been spent.

Summing up for the two Committees, Mr. Smith said that it seemed to him that if any study of the civil service system were needed, it could be handled by a Special Committee or by the Section of Administrative Law.

The House then voted on the proposal and Mrs. Litvin's substitute was defeated and the proposal of Rules and Calendar and Scope and Correlation to discontinue the Standing Committee on Civil Service was carried.

The House recessed at 4:30 P.M.

Second Session

The House reconvened at 9:10 A.M. on Tuesday, August 26, with Chairman Shepherd presiding.

The first order of business was the election of Albert J. Harno, of Los Angeles, California, for a five-year term as a member of the Committee on Scope and Correlation of Work. Dean Harno had been nominated at the First Session, but the By-Laws of the Association require nominations to be made at the first session of the House during the Annual Meeting and the election to be held at the next session.

Committee on Administrative Appointments

The Report of the Special Committee on Administrative Agency Appointments was delivered by its Chairman, Clarence A. Davis, of Washington, D. C. Mr. Davis explained that his Committee had been set up a year and a half ago in emulation of the Committee on Federal Judiciary which has had considerable success in collaborating with the Executive Branch on the appointment of federal judges. The work of his Committee, he said, was to do the same thing for lawyer members of administrative agencies that exercise judicial authority. He reported that the system was working well and that all appointments of lawyers to the various administrative agencies exercising judicial authority during the past year had been referred to his Committee. "... nothing actually will solve some of the problems of administrative law as much as the continuous program of the agency personnel, and that in many of the agencies, the appointment of lawyers to these positions rather than laymen is a highly desirable thing", Mr. Davis said.

(Continued on page 1103)

New England Regional Meeting

Portland, Maine, October 1-4, 1958

The twentieth Regional Meeting of the American Bar Association since the commencement of the present program in 1951 was held in Portland, Maine, October 1-4, for lawyers in the New England states of Maine, Connecticut, New Hampshire, Massachusetts, Rhode Island and Vermont.

Some 550 lawyers, judges and law teachers, accompanied by nearly 200 wives and other guests, attended the meeting. This gratifying attendance surpassed the expectations of those who planned the meeting, and was undoubtedly inspired by one of the finest programs ever presented at a regional meeting. This program was planned, and all details of the meeting were arranged, by Co-Chairmen David A. Nichols and Robinson Verrill. They were ably assisted by Clement F. Robinson, long-time leader in bar association activities in Maine, who served as Honorary Chairman, and by a strong and dedicated Executive Committee comprised of leading lawyers from Maine and the other New England states.

President Malone's Address

In making his first major address to an American Bar Association audience since taking office, President Malone spoke on "Professional Responsibilities of the Bar". One of these responsibilities, which he emphasized, is to assure that applicants for admission to the Bar have the character, intelligence and ability which are necessary to meet the ever-increasing requirements of the legal profession. In addition to the obvious need for the requisite quality, President Malone pointed out that for a number of years there has actually been a decrease in the number of both law students and admissions to the Bar in relation to total population. He said:

> In my opinion the profession should be seriously concerned as to both the quality and the quantity of applicants for admission to the law schools of the country today. The two cannot be divorced. If they are in jeopardy we must take steps to meet a condition which, if neglected, could have a serious effect upon the future of our profession.

Other Principal Addresses

Sharing the platform at the opening Assembly with President Malone was Catherine Drinker Bowen, noted authoress and lecturer. Speaking on the subject of "Two Giants of the Law—John Adams and Holmes", Mrs. Bowen's charm, eloquence and intimate knowledge of her subject entranced her audience. It was particularly appropriate for her to talk of Adams and Holmes before a capacity crowd of New England lawyers.

The next principal speech was delivered by Lawrence E. Walsh, Deputy Attorney General of the United States. In addressing the General Assembly luncheon, Judge Walsh spoke informally and frankly about one of the major problems confronting the legal profession—and indeed the entire country. This is the problem resulting from resentments which have arisen from certain decisions of the Supreme Court.

While Judge Walsh did not question either the right to criticize or the sincerity of those who now question these decisions, he expressed deep concern about those who go beyond fair criticism and who condemn the Court as an institution and deny its historic role as the final arbiter of our constitutional rights. He pointed out that indiscriminate attacks of this kind not only undermine the Supreme Court but also diminish public respect for law and its processes. He urged lawyers, above all others, to defend the Court as an institution which is essential to the preservation of our federal system of government. He also deplored efforts, such as the Jenner Bill, to restrict the ancient jurisdiction of the Court.

Address by Governor Dewey

The Assembly Banquet, attended by some 500 lawyers and guests, was addressed by Thomas E. Dewey, of New York City, who spoke on the importance as well as the problems of attaining ultimate peace through law. Having served last year as chairman of the Association's Special Committee on International Law Planning, Governor Dewey reviewed the history of various attempts to settle international disputes by arbitration or by a court of international justice. Despite all of the obvious difficulties, he stated that the free world must continue to work toward the establishment of a system of compulsory settlement of international disputes under law. If and when the Communist nations become "sufficiently civilized", the countries which understand the "rule of law" must have a system for the settlement of international disputes so fully developed that it can be expanded to include the Communist nations.

Outstanding Workshop Programs

Without minimizing the importance of stimulating addresses, the "heart" of any regional meeting is the workshop. Concentrating on subjects believed to be of special interest to New England practitioners, a workshop program of unusually high quality was presented.

On Thursday afternoon there was a well-attended session on "Trial Tactics", presided over by Stanley M. Burns, of Dover, New Hampshire, and sponsored by the Section of Insurance, Negligence and Workmen's Compensation Law and the Junior Bar Conference. The first part of the session was devoted to "The Preparation and Trial of a Civil Action", with the speakers being Henry F. Black, White River Junction, Vermont; Scott Brown, Houlton, Maine; William Fox Geenty, New Haven, Connecticut; and Abner R. Sisson, Boston, Massachusetts. The second portion of the program was devoted to "The Evaluation and Settlement of Personal Injury Claims", led by Thomas F. Lambert, Jr., Boston, Massachusetts.

An interesting "bread and butter" program was presented by the Section of Bar Activities and the Committee on Economics of Law Practice on the subject of "How Can the Small Town Lawyer Keep Pace With Rising Costs?" Willoughby A. Colby, of Concord, New Hampshire, presided over this session, and panelists were Luther M. Bang, Austin, Minnesota; John C. Satterfield, Yazoo City, Mississippi; and Christy C. Adams, Rockland, Maine. Facts, figures and forms were presented which should be of material assistance to all practitioners and especially those interested in law office management problems.

On Friday there were four excellent workshop programs. The Section of Real Property, Probate and Trust Law sponsored a well attended and informative discussion of the "Planning of a Small Estate". This was presided over by Carl F. Schipper, Jr., Boston, with Earle T. Spear, Boston, Holbrook Campbell, Springfield, Massachusetts, and Jotham D. Pierce, Portland, Maine, serving as panelists.

The Section of Corporation, Banking and Business Law arranged a distinguished panel of speakers on "What the General Practitioner Should Know About Sources and Methods of Financing Small Businesses", presided over by George D. Gibson, Richmond, Virginia. Speakers on this program included Edward N. Gadsby, Chairman of the Securities and Exchange Commission, Philip McCallum, General Counsel of the Small Business Administration, and Carl W. Funk, of Philadelphia, Chairman of the Section's Committee on Banking. The papers presented at this session were of exceptionally high quality, and will be printed in *The Business Lawyer* and thereby made directly available to the Section's 10,000 active members and generally available to all Association members.

The "Income Tax Problems of Small Businesses" was the subject of a program presented by the Section of Taxation and the Committee on Continuing Legal Education. Allan H. W. Higgins, Boston, arranged the program and presided at the workshop. Principal speakers were Harry K. Mansfield, Boston, William Shelmerdine, Jr., Boston, with Merrill R. Bradford, Bangor, Maine, Paul N. Olson, Brattleboro, Vermont, and Daniel T. C. Drummond, Portland, Maine, serving as panelists. There was, as usual, a very considerable interest in this subject.

Although the general practitioner normally does not practice "labor law", it was felt desirable to present a program in this specialized field. Under the sponsorship of the Section on Labor Relations Law, Professor Archibald Cox, of Harvard Law School, spoke on "What the General Practitioner Should Know About Federal Labor Legislation". Panelists for this program included Bernard L. Alpert, Regional Director for the First Region, National Labor Relations Board, John W. Morgan, Boston, Robert M. Segal, Boston, Alfred Kamin, Chicago, and George B. Reilly, Washington, D. C.

Other Programs of Interest

There were a number of other programs of unusual interest to the profession. The American Judicature Society held a notable breakfast meeting, attended by more than two hundred judges and lawyers. President Albert E. Jenner, Jr., of Chicago, presided, and received reports on recent progress in procedural reform from Professor Richard H. Field of Harvard, Chief Justice Frank R. Kenison of the New Hampshire Supreme Court, Judge Sterry R. Waterman of the United States Court of Appeals for the Second Circuit, Chief Justice Paul C. Reardon of the Massachusetts Superior Court, Robert A. Coogan, Providence, Rhode Island, and L. Stewart Bohan, Meriden, Connecticut.

The Special Committee of the Association on Federal Legislation conducted an interesting seminar on "National Legislation of Interest to the Legal Profession". Senator Robert W. Upton presided over this seminar, and was ably assisted by past President Charles S. Rhyne and Donald C. Beelar, of Washington, D. C.

Continuing Legal Education

President Malone stated at Los Angeles that one of the major objectives of his administration would be to expand the scope and quality of continuing legal education.

In furtherance of this objective, he personally arranged a Saturday morning "how-to-do-it" session on this subject, and invited the presidents of all state and local bar associations in the region to attend or send representatives. As continuing legal education has been the joint responsibility of the American Law Institute and the Association, Harrison Tweed, President of the American Law Institute, participated in planning this session and joined President Malone in outlining their plans for intensified activities in post-graduate legal education.

Walter E. Craig, Phoenix, Arizona, Chairman of the Association's Committee on Continuing Legal Education, presided over the extremely interesting and practical discussion of the most successful techniques which have been employed in this field. Panelists, all recognized leaders of wide experience, were Professor A. James Casner of Harvard Law School, August G. Eckhardt of the University of Wisconsin Law School, John E. Mulder, Director

of the Committee on Continuing Legal Education, and Felix Stumpf, Administrator of Continuing Legal Education for the State Bar of California.

Social Functions

The Maine Bar Association and the Cumberland County (Portland) Bar Association joined in providing interesting and generous hospitality. In addition to special entertainment for the ladies, there were two receptions, a dance sponsored by the Junior Bar Conference, and a unique "Maine Lobster Party" where clams and enormous lobsters were served to more than 600 guests.

Canadian Participation

An international flavor was added to the meeting by the presence of several Canadian lawyers. Among these were Walter S. Owen, Q.C., recently elected President of The Canadian Bar Association, who extended greetings at the banquet. M. Gerald Teed, Q.C., President of the Barrister's Society of New Brunswick spoke at the opening Assembly Session.

Example of Co-operation

This was the first official American Bar Association meeting held in Maine in more than fifty-one years. There had been some question whether a successful regional meeting could be held so far "down east". It was deemed important, however, to make an effort to bring the American Bar Association closer home to the lawyers of a region which is comparatively remote from most Association meetings.

Charles S. Rhyne, then President of the Association, urged last year that a meeting be held in northern New England. The Regional Meetings Committee of the Association, under the chairmanship of Lewis F. Powell, Jr., presented President Rhyne's idea to a group of leading New England lawyers. This group, comprised primarily of the presidents of the state bar associations and the State Delegates to the American Bar Association within the region, undertook the responsibility of working with Co-Chairmen Nichols and Verrill to assure not just the holding of another meeting—but that there would be a truly outstanding one.

These bar presidents, who co-operated so effectively, included Raymond F. Barrett, President of the Massachusetts Bar Association, William S. Silsby, President of the Maine Bar Association, Judge Sterry R. Waterman, then President of the Vermont Bar Association, Emile Lemelin, President of the New Hampshire Bar Association, and James W. Cooper, President of the State Bar Association of Connecticut.

The State Delegates from the region, all of whom contributed significantly to the success of the meeting and attended it in person, are Osmer C. Fitts, of Vermont, Henry C. Hart, of Rhode Island, Allan H. W. Higgins, of Massachusetts, Charles W. Pettengill, of Connecticut, David A. Nichols, of Maine, and Robert W. Upton, of New Hampshire.

The Problem of Delay

(Continued from page 1046)

so simple that every individual could plead his own case.

In New York, an early council action resolved that "attorneys be no longer allowed to practice".

As late as the middle eighteen hundreds, bar associations were dissolved in disrepute or from just plain lack of professional interest and organization. And, during this same period, several of the states—in actions aimed at the organized Bar—adopted statutes or constitutional provisions providing that "every person over twenty-one years of age, who is of good moral character, shall have the right to practice in any court". In the case of Indiana, this provision stayed in the Constitution until as recently as 1932.

The legal profession, therefore, like our judicial system, has developed at a very halting pace. The rise of the profession and the bar association—as we know it today—began only about eighty years ago and, the progress was not very substantial until a comparatively short time ago. The result is that we find ourselves today—the Bench and the Bar—in a state of "flux", and only on the threshold of maturity.

I have made this statement, not for the purpose of destroying any of our sentimental traditions of our profession, but for the purpose of demonstrating that the prestige we have today is the result of recent-day efforts, and that now we can, if we will only work together, do something substantial for our nation and ourselves without violating either tradition or reason.

I speak to you, my brethren, in this way—not out of any sense of criticism or frustration, but in the sense that I have faith, not only in the American system of justice, but faith in the lawyers and faith in the judges of this country. I know that when they recognize the importance of our situation, they will meet it.

AMERICAN BAR ASSOCIATION

Journal

TAPPAN GREGORY, *Editor-in-Chief*.....Chicago, Ill.
LOUISE CHILD, *Assistant to the Editor-in-Chief*.....
.....Chicago, Ill.

BOARD OF EDITORS

ROBERT T. BARTON, JR.....Richmond, Va.
ALFRED J. SCHWEPPE.....Seattle, Wash.
GEORGE ROSSMAN.....Salem, Ore.
RICHARD BENTLEY.....Chicago, Ill.
EUGENE C. GERHART.....Binghamton, N. Y.
ROY E. WILLY.....Sioux Falls, S. Dak.
E. J. DIMOCK.....New York, N. Y.
ROSS L. MALONE, *President of the Association*.....
.....Roswell, N. M.
SYLVESTER C. SMITH, JR. *Chairman of the House of Delegates*.....Newark, N. J.
HAROLD H. BREDELL, *Treasurer of the Association*.....
.....Indianapolis, Ind.

General Subscription price for non-members, $5 a year.
Students in Law Schools, $3 a year.
American Law Student Association members, $1.50 a year.
Single copy price, 75 cents; to members, 50 cents.

EDITORIAL OFFICES

1155 East 60th Street.....Chicago 37, Ill.

Controversy About the Judiciary

It has been said that the founding fathers, in creating the constitutional form of democracy under which we live, insured that there would be no titles of rank or nobility. As a substitute they created a federal judicial system, whose members hold position, title and emoluments during good behavior. In the history of the federal judiciary there have been but few instances in which its members have left office other than by resignation or death. It has a splendid record of service to the country. However, as evidenced by the resolution adopted by the Conference of Chief Justices at Pasadena last August, and by a resolution approved by the House of Delegates on the subject of judicial appointment, and by the general tenor of reader letters in this and recent issues of the JOURNAL, a marked degree of dissatisfaction exists with some of the recent decisions of our federal courts. This dissatisfaction is not directed at the structure of the judicial system but rather at the scope and extent of the power and jurisdiction which the federal courts have recently assumed to exercise.

Criticism of the federal courts, especially the Supreme Court, is—as has been repeatedly emphasized—not new. This is the second time within recent years that the Supreme Court has been involved in a serious controversy. Many of the members of the Bench and Bar who are now most critical of the Supreme Court were its strongest supporters twenty-one years ago in defending it against a concentrated and powerful attack by the Executive Branch of our Federal Government, which sought to secure a change in the Court's decisions by adding to the members of the Court additional judges who would be in sympathy with the political thoughts and philosophy of the then dominant party.

Thanks to the strong support of the Bench and Bar, Congress in 1937 refused to pass the requested legislation, the Court emerged unscathed, and the principle of an independent judiciary was sustained. As so often occurs in public life, the situation has now been reversed and the Supreme Court, while in favor with the Executive Branch, is now under attack by the Bench, Bar and Congress. The issues here involved do not relate to the size of the Court but are confined to the jurisdiction and powers which it has assumed. Behind the scenes are influences which have been responsible for many dramatic periods and events of our past history. Our form of government, with its three separate and distinctive branches, each independent of the others and yet in a measure each dependent upon the others, from time to time leads to a conflict of authority and power. At present the controversy involves the judicial and legislative authority, as well as the conflicting issues raised by the individual sovereignty of the states. Many lawyers and judges sincerely feel that recent Supreme Court decisions have seriously jeopardized the rights of the states in matters of domestic concern. If controversy in the past has been the lifeblood of our democracy, it is self-evident that we are now receiving a fresh and bountiful source of new strength.

Editor to Readers

The easy grace, the quiet charm and the unfailing courtesy of our generous hosts at the meeting in London last year are never to be forgotten. They made it abundantly clear that we were welcome. The warmth of this welcome is testified to in two passages we quote from the remarks of two eloquent speakers among the many at Los Angeles last August. They are truly heart-warming.

In his address before the Section of Insurance, Negligence and Compensation Law, Sir William Charles Crocker, M.C., Past President of the Law Society, made these pleasant comments:

> I think I may begin with a reference to the greatest Anglo-American of all time—Sir Winston Churchill. When he was speaking of his mother's country (these United States) and of his father's country (England) he said: "There you see two countries separated by only one barrier—the differences in their respective languages." This was, of course, a typical

Churchillian sally—nobody knows better than he that the slight improvements which you have effected in the phrasing and pronunciation of our common tongue add up, not to a barrier, but to a charming national characteristic by which you may be unfailingly identified to your friends overseas as is the nightingale by his song. And I find the converse is also true or nearly true here. I do not claim to be any part of a nightingale but if quite unconsciously I momentarily slip into my native idiom some sharp-eared American is apt to ask: "Could you by any chance come from the jolly old British Isles?" Some of your friendlier taxi drivers guess I am a Scot and call me "Mac". The truth is that our differences are obvious and I think full of fascination. We are instantaneously recognized for what we are and I can only dare hope that when my fellow cockneys recognized you as hailing from the U.S.A. they gave you a welcome one half as warm as I have invariably received over here. It is not easy to pinpoint all the influences, the new influences, which have operated to draw English and American lawyers into a closer understanding of one another over the past thirty years. . . . But no influence is more effective than that produced by happy meetings. Of the 100 lawyers who came from the British Isles as your guests with a handful of French in 1930 I doubt whether a dozen had ever crossed the Atlantic before. Some of the party probably wondered whether it would not be wise to carry pemmican and beads for the Indians. . . . We have come a long way in mutual understanding since then.

And we like to think that the friendly expressions of Mr. Leslie E. Peppiatt, President of the Law Society, in his address before the Assembly, came right from the heart as we feel sure they did. This was his generous tribute:

I can assure you that without reservation we took you to our hearts. We simply loved you. English people are supposed, I know, to be taciturn and slow to express their feelings, but I should be surprised—indeed horrified—to learn that any of you came home with any impression other than that you had been received not only as distinguished and welcome guests—as of course you were—but also as dear friends.

It was not only at the formal functions that we met. Many of you honored us by visiting us in our homes and whether the home was a mediaeval castle—possibly with mediaeval draughts and plumbing!—or a humble villa in suburbia, you always brought with you the same warm and open friendliness which endeared you to us all.

I have spoken of all sorts and conditions of people at home—not only lawyers but hotel keepers, shopkeepers, taxicab drivers, policemen, school teachers and those who go by the name of the men in the street—I asked them all what they thought of the visiting American lawyers and their wives and just as my heart was warmed by their answers so I am sure would yours be if I were to repeat what I was told.

Here I believe lies the heart and strength of the friendship and alliance between our two peoples. That this alliance is expedient for both of us must I think be plain to us all and that it is essential and vital to the maintenance and development of the peace of the world there can be little doubt—but how could this alliance be maintained if personal sympathy and understanding between individual Americans and individual Englishmen were lacking? You sent over to my country last summer a magnificent embassy of six thousand of your finest citizens. You showed us at home what manner of people the Americans are. We saw and were abundantly satisfied. We were enchanted and delighted.

THE AMERICAN PEERAGE

By Gordon W. Chambers
Judge, City Court of Richmond County, Georgia

Gentlemen of the jury, by being selected for jury service you have been elevated to the peerage of democracy. As such you have a noble opportunity for service, obligated by patriotic duty to God and Country. This duty is deserving of the consecrated dedication of a conscientious concentration of your abilities and the just impulses of your honor.

You are a shield of protection against false accusers, transitory passions and prejudice.

You are determiners of truth revealing the character of our country as a land of the free and home of the brave.

You are the preservers of liberty that walks with progress and restrains only libertine license to insure its own freedom.

You are the protectors of all legal rights of society, citizenship and the state.

You are guarantors of justice, constitutional and statutory, exactly, evenly and universally applied.

You are the custodians of American civilization, for without law there can be no civilization, without courts there can be no law and without truth and independence there can be no courts.

The only title of nobility recognized by America's loyal house is in the peerage of the jury box where trial by peers determines the truth of issues between the state and its citizens.

This title carries no feudal privilege or materialistic value. However, it merits the accolade of achievement—the accomplishment of the aristocracy of service.

This high honor carries only the title as a word of address or as an adjective of description, "Gentlemen of the Jury".

Books for Lawyers

FEDERAL INDIAN LAW. *United States Department of the Interior; Office of the Solicitor. Washington, D. C.: United States Government Printing Office. 1958. $4.00. Pages xix, 1106.*

The Europeans who have settled and developed the United States have been inconsistent and uncertain in their views as to the proper place of the indigenous population. Extinction, removal, wardship, isolation, cultural preservation, absorption into the general culture of the nation all have been pursued, consciously or unconsciously, at varying times or at the same time, as the ends to be sought with reference to the Indians. The legal tools directed at accomplishment of these aims are embodied in a heterogeneous mass of treaties, statutes, orders, memoranda, opinions, judicial decisions and other material. Until the *Handbook of Federal Indian Law* was issued by the Department of the Interior in 1942, no comprehensive guide to these was available. That work was principally the production of Felix S. Cohen, then assistant solicitor of the department, though he acknowledged modestly the aid of many associates. It was acclaimed in the pages of this JOURNAL as "a first class text on 'Indian Law' ".[1] The acclaim was justified, unquestionably.

The present work, prepared with an anonymity that defies a reviewer's attempt to attribute authorship,[2] is stated in the preface to be "a revision and updating through the year 1956" of Mr. Cohen's work. The revision has included a regrouping of the original twenty-three chapters into eleven, coupled with substantial rearrangement of part of the text. However, by use of the tables of contents of the two volumes, it is possible to follow the text of the old into its place in the new. The work of updating has been done thoroughly and conscientiously. This new volume is indispensable to the lawyer who may be concerned with Indian matters or who may wish to become informed concerning the law applicable to Indians.

There are a few statements, not of great importance in respect to the main topic of the book, about which I should register doubt. The most significant of these seems due to an uncritical carrying over of an inaccuracy in the original edition. Mr. Cohen, in recording the decision of *Allen* v. *Trimmer*[3] that Congress constitutionally could revoke the nontaxability of the allotments of Chickasaw freedmen, although it could not do so as to Indian allottees,[4] had remarked that "[t]he same reasoning would seem equally applicable to the Choctaw freedmen". In fact, there was an express ruling to the contrary,[5] based on the ground that the Choctaws, unlike the Chickasaws, had granted their freedmen a limited type of tribal membership. Mr. Cohen overlooked this, and the revisors have repeated his oversight.[6] On their own motion, they have indicated that the determination[7] that the Cherokee Nation could provide for a grand jury of five members because the Nation was not subject to the Fifth Amendment finds its analogue in the decision[8] sustaining Utah territorial legislation providing for a grand jury of fifteen.[9] Also, they suggest the unconstitutionality of the provision of the treaty with the Cherokees in 1785, permitting that tribe to send a delegate to Congress.[10] I should question the validity of both these positions,[11] though in each instance the question now is of antiquarian interest only.

Comparison with the original edition is the natural reaction of a reviewer. Basically, except for the rearrangements, the original text has not been altered, a tribute to the thoroughness and the accuracy of Mr. Cohen's work. But there are some noticeable variances. The original text was written under the influence of the enthusiasm for the protection and building up of tribal institutions, for the preservation of tribal culture and self-government, and for the purchase of additional inalienable and tax-free lands for the Indians that marked the administration of Indian affairs by Commissioner John Collier. In that enthusiasm, Mr. Cohen evidently participated. His text, over and over again, spoke in terms approbative of the new policy. The past administration of Indian affairs frequently was condemned as short-sighted, mistaken, too much in the interests of the white man and against the interests of the Indian. Most of these passages have been eliminated, or have been rewritten in a more objective fashion. This of course is to be expected. Today the nation's Indian policy is undergoing reappraisal. Many feel that the segregationist ideal is contrary to the best interests of the first Americans and that their true destiny is to be found in mobility and in full participation in the life of the country. The revision reflects this reappraisal, in its more restrained treatment of the various policies and even, occasionally, in a characterization as "arbitrary" of what had been regarded as

1. See Brown, book review, 29 A.B.A.J. 207 (1943).
2. The preface is signed by Elmer F. Bennett, present solicitor of the Department, but he tells us that the "work was undertaken and largely completed during the incumbency of my predecessor, Solicitor J. Reuel Armstrong". Elsewhere in the preface, Mr. Bennett says: "This revision was done under the supervision and direction of Deputy Solicitor Edmund T. Fritz by Frank B. Horne assisted by Margaret F. Hurley. Completion of this work would have been impossible without the cooperation and assistance of many people throughout the Department, especially the assistance of Associate Solicitor Henry E. Hyden."
3. 45 Okla. 83, 144 Pac. 795 (1914), writ of error dismissed for failure to file brief or to appear, 248 U.S. 590 (1918).
4. *Choate* v. *Trapp*, 224 U.S. 665 (1912).
5. *Farris* v. *Union Cent. Life Ins. Co.*, 72 Okla. 220, 179 Pac. 919 (1919).
6. See page 1011.
7. *Talton* v. *Mayes*, 163 U.S. 376 (1896).
8. *Reynolds* v. *U.S.*, 98 U.S. 145 (1878).
9. See page 398.
10. See page 170.
11. As to the grand jury, since at common law such juries varied in number from twelve to twenty-four, 1 BOUV. LEGAL DICT. (Rawle's 3d rev.) 1373, the Utah territorial legislation was within the terms of the Fifth Amendment, and the only question in the *Reynolds* case was whether the federal statutes governing the United States courts applied to the territorial courts. In fact, it has been accepted that the Bill of Rights does govern the organization and procedures of territorial courts, *Thompson* v. *Utah*, 171 U.S. 380 (1898), which puts the territories in a position completely different from the Cherokee Nation, as determined in the *Talton* case.

As to the Cherokee delegate, note that the treaty, made in 1785, was made "the supreme Law of the Land" by the express provision of Article Six of the Constitution. Moreover, the fact that only states are authorized to send Senators and Representatives to Congress has not rendered it unconstitutional for territories to be allowed delegates. I suggest that it was inaction and the supersession of the 1785 treaty by later agreements, not the Constitution, that deprived the Cherokees of their delegate.

quite proper in the original text.[12]

Mr. Cohen, perhaps as a result of his interest in the new approach to Indian affairs, tended to write extensively on the history of our relations with the aborigines. Much of this has been omitted from the present volume. That which remains has been compressed materially.

There were included as a supplement to the original volume an index of materials on Indian law, arranged by tribes and including references to textbooks, periodical articles, special studies, statutes, treaties, judicial decisions and administrative decisions, rulings and opinions; an annotated table of statutes and treaties relating to Indians or Indian affairs; a table of federal cases; a table of Interior Department rulings; a table of Attorney General's opinions; and an exhaustive bibliography of legal literature bearing on Indian law. These have not been reprinted in the volume under review nor have they been supplemented.

Because of the variances which I have pointed out, the present revision cannot be said to supersede entirely the original work. For completeness, both volumes should be kept in one's library. The two are indispensable items of any collection in which it is sought to include the tools essential to effective research upon problems in Indian law.

MAURICE H. MERRILL

University of Oklahoma
Norman, Oklahoma

STATES' RIGHTS—THE LAW OF THE LAND. *By Charles J. Bloch. Atlanta, Georgia: The Harrison Company. 1958. $10.00. Pages 390.*

This book is obviously spurred by the decisions in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), 349 U.S. 294 (1955) and *Bolling* v. *Sharpe*, 347 U.S. 497 (1954), which invalidated state and federal statutes a century old providing for racially segregated schools and which set aside the "separate but equal" doctrine deemed settled for sixty years. *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), *Gong Lum* v. *Rice*, 275 U.S. 91 (1927), *Gaines* v. *Canada*, 305 U.S. 337, 344 (1938), *Sweatt* v. *Painter*, 339 U.S. 629 (1950).

The author traces the legal concept of states' rights from colonial days down through 1957. He concludes, as has recently the distinguished retired federal Judge Learned Hand, that the Supreme Court in recent decades, especially in the last few years, has made itself a third house of the legislature as well as a new constitutional convention, without benefit of ratification by the several states. Mr. Bloch highlights the realization of Jefferson's fears, expressed in 1823:

> ... there is no danger I apprehend so much as the consolidation of our government by the noiseless, and therefore unalarming, instrumentality of the Supreme Court.

The author, Mr. Bloch, would today doubtless amend the words "noiseless" and "unalarming".

Dividing his discussion between pre-Fourteenth Amendment (1868) and post-Fourteenth Amendment judicial attitudes toward the rights of the states, the author makes it plain that the nature of the Federal Government as one of limited and delegated powers and the reserved rights of the states were until recent times judicially respected. As late as 1936 the Court had said in *United States* v. *Butler*, 297 U.S. 1, 68:

> From the accepted doctrine that the United States is a government of delegated powers, it follows that those not expressly granted, or reasonably to be implied from such as are conferred, are reserved to the states or to the people. To forestall any suggestion to the contrary, the Tenth Amendment was adopted. The same proposition, otherwise stated, is that powers not granted are prohibited.

Nevertheless, the author points out, under the guise of construing the Fourteenth Amendment, the Court has more and more reached into the reserved powers of the states. While at first denying the concept, the Court gradually, over a short period of nine years, drew the First Amendment freedoms of speech, press and religion into the orbit of the Fourteenth Amendment by a broad construction of the word "liberty", departing from the concept of "freedom of restraint" embodied in the Fifth Amendment, whence the word was imported into the Fourteenth. To use the author's pointed language (page 127):

> By the same line of reasoning, if the word "liberty" in the Fourteenth Amendment was to be given the broadest meaning possible, then it would have had that same meaning in the Fifth Amendment. If that were true, there was no need to adopt the First Amendment along with the Fifth. The Fifth would have sufficed as embracing in the use of the word "liberty" all that was protected in the First Amendment.

Similarly, according to the author, by unwarrantably stretching the Fourteenth Amendment, the Court in recent years has drawn unto itself the function of intimate supervision of the right of the states to enforce their own criminal laws. The same treatment, by reversing prior positions, has been accorded election laws. And when given a choice between upholding state laws or state action as permissible alongside congressional legislation or federal action in the same field, such as subversive activities or jurisdiction in labor affairs, the Court has generally chosen to strike down the rights of the states.

Foremost, of course, in the author's mind is his intellectual distress over the school segregation decisions which upset previous Supreme Court rulings that had long been considered as leaving "the question no longer open in this court". (Expression used in *Twining* v. *New Jersey*, 211 U.S. 78, 97.) He points out that as recently as *Gong Lum* v. *Rice*, 275 U.S. 91 (1927) the Court had unanimously sustained segregated schools (See 42 A.B.A.J. 808, September, 1956), and that in 1938 Mr. Chief Justice Hughes, speaking for a majority of himself and Justices Brandeis, Stone, Black, Reed, and Roberts, had said (*Missouri* ex rel. *Gains* v. *Canada*, 305 U.S. 337, 344):

> The State has sought to fulfill that obligation by furnishing equal facilities in separate schools, a method the validity of which has been sustained by our decisions. *Plessy* v. *Ferguson* (163 U.S. 537, 544); *McCabe* v. *Atcheson, Topeka and Santa Fe Railway Co.* (235 U.S. 151, 160); *Gong Lum* v. *Rice* (275 U.S. 78, 85, 86). Compare

12. See pages 777, 959, in comparison with pages 215 ff. and page 413 of the earlier text.

Cumming v. *Board of Education* (175 U.S. 528, 544, 545).

In fact, in *Sweatt* v. *Painter*, 339 U.S. 629 (1950), the identical Court that decided *Brown* (substituting only Chief Justice Vinson for Chief Justice Warren), namely, Justices Black, Reed, Frankfurter, Douglas, Jackson, Burton, Clark, and Minton, rested the decision squarely on the separate but equal doctrine.

But on May 17, 1954, all this was changed by a Court that instead of declaring "what the law is" declared what, in the personal opinion of the then incumbent judges, the law ought to be, in spite of a hundred years of federal and state legislation to the contrary, and judicial decisions long accepted by the Court itself as conclusive.

But if the *Brown* case was startling, the companion *Bolling* case, dealing with segregated schools in the District of Columbia, was even more startling.

The Court decided the *Brown* case under the equal-protection clause of the Fourteenth Amendment. But in the companion case of *Bolling* v. *Sharp*, decided the same day with reference to the District of Columbia's segregated schools, the Court faced the dilemma that the Federal Constitution contains no equal protection clause as a limitation on the Federal Government. The Fourteenth Amendment contains both a due process and an equal protection clause, the due process clause having been taken over verbatim from the Fifth Amendment, and adds purposefully an equal protection clause, because that concept was deemed and construed not to be embraced in due process. See *Hurtado* v. *California* (110 U.S. 516, 534-5). But the Fifth Amendment, applicable to the Federal Government, contains only a due process clause.

However, the Court that had made the "psychological" ruling in *Brown* was equal to the dilemma that it faced in *Bolling*. It held that the due process clause of the Fifth Amendment should be deemed also an equal protection clause as respects the Federal Government—a clear case of judicial amendment of the Constitution.

When the Fifth Amendment was adopted in 1791, at the instance of the very first Congress, importation of slaves was expressly protected in the Federal Constitution until 1808 (Article 1, Section 9), and slaves were then considered property protected by the due process clause of the Fifth Amendment.

Thus a provision of the Federal Constitution which, when adopted in 1791, did not prohibit but protected slavery is now construed in 1954 to prohibit segregation in the public schools of the District of Columbia.

Following this long and pointed critique of the Court's invasion of the rights of the states, it is understandable that the author should conclude that the Congress should do what it can to restore the rights of states as traditionally contemplated, and that the Senate should take far more seriously its constitutional duty to screen nominees for the Supreme Court.

ALFRED J. SCHWEPPE
Seattle, Washington

POLITICAL POWER AND THE GOVERNMENTAL PROCESS. *By Karl Loewenstein. Chicago: University of Chicago Press. $6.00. 1957. Pages 385.*

"It is hardly an exaggeration to describe the American pattern of government as the most difficult of all in actual operation. . . . That it worked at all is a near miracle, explainable only by the abundance of a nation that could afford a cumbrous and wasteful governmental system."

No one reading this highly sophisticated study of government will seriously disagree with this statement by the author. Perhaps in our jibes at the French form of government, we Americans are more naïve than knowing!

Mr. Loewenstein treats not just of our present system of government in the United States, but analyzes as well the dynamics of other systems in other nations, past and present.

We lawyers in particular should consider it a professional duty to know and understand the basic processes of government. Yet extremely few of us really do. Certainly neither the skeletal knowledge we acquired in undergraduate political science courses, nor even the extensive knowledge of the mechanics of governmental processes we acquired in law school and daily practice will suffice today. In this respect no other single volume is likely to profit us more than this work.

Common terms such as "representative government", "democracy" and "human rights" have been so used and abused in our own day that the terms have become almost meaningless. The Russians are merely the most conspicuous of the many who disguise cruelty and tyranny under such classical labels. Some nations in Latin America obviously do the same and so do some of our own states in the South which we think of as democratic though in practice they deny any voice in government to half of their citizens.

The author is an attorney and a member of the Massachusetts and American Bar Associations. He has had many years of broad experience in and out of government as an attorney, as a businessman, and as a teacher, not only in the United States but in Europe and Latin America as well. He is a leading authority in this field and holds the William Nelson Cromwell Chair of Jurisprudence and Political Science at Amherst.

Mr. Loewenstein's analytical study is refreshingly realistic. He takes into account not only those who officially direct and wield governmental power but the unofficial but often more important individuals behind the scenes. From this functional standpoint, some kings' mistresses and some personal confidants of American Presidents have played identical roles in government. He gives needed recognition to the important role of political parties in government today. He aptly describes the parties in the United States as "the lubricating oil of the entire state machinery".

Mr. Loewenstein makes clear that such cherished concepts as our doctrine of "separation of powers" have never had very much relation to reality and have even less today when both the Executive and Judicial branches of our government often make fundamental policy decisions which theoretically are reserved under our Constitution to the

Legislative branch. Our Legislative branch in turn not infrequently takes to itself some of the functions which in traditional constitutional theory belong to the Executive and Judicial branches.

We lawyers who talk naïvely of eliminating politics as a factor in the selection of judges should all read his highly informed discussion of this subject. He reviews in detail the various systems of selection in European and Latin American nations as well as in the United States. He concludes that there is no ideal method for selecting judges nor any that would exclude political considerations.

Mr. Loewenstein points out how the increasing complexity of our economic life has increased the power of our Federal Government at the expense of the individual. This growth has whittled away the individual liberties of each of us as well as eroding such protective buffers between the individual and the executive power of the Federal Government as states' rights and the separation of powers. He realistically treats also of the modern-day danger to true democracy inherent in the development of mass communication media which by their nature are largely controlled by a powerful few.

His somewhat pessimistic view may not be justified if we take into consideration the effect of the steady trend in the United States toward a wider distribution of wealth. Is not an individual citizen whose financial resources enable him to establish his limited legal rights better able to resist oppression than the individual who in the past had more extensive legal rights but who in most cases lacked the financial resources necessary to establish them?

The author states with regret in his preface that such a study as this requires too much "terminological clarification" for the taste of some readers. The one defect in this work is the very difficult language used by the author.

It is exceedingly unfortunate that the author has buried the real treasure of his thought in language too difficult for the average man to read and understand. No doubt it would take considerable literary talent to write such a work as this in plain English, but it certainly could be done. As written, this book will not be read by more than a very small percentage of the millions who should read it. Yet its content is so rich and so challenging that if rewritten by someone with more skill in writing the English language it might well make the "best seller" lists.

THOMAS MORAN

San Diego, California

New Books for the Practicing Lawyer

Selected by the Cromwell Library American Bar Foundation with permission of the American Association of Law Libraries from Current Publications in Legal and Related Fields, *compiled by Dorothy Scarborough, Northwestern University Law School Library, and distributed by Fred B. Rothman & Co., 57 Leuning Street, South Hackensack, New Jersey. $3.75 per year. The American Bar Association cannot supply copies of any books listed. It is suggested that you get in touch with your bookseller or the publisher to obtain copies of listed works.*

Alpert, L. M. FLORIDA AUTOMOBILE ACCIDENT LAW. Charlottesville, Michie, 1958. 368p. $15.00.

Boughner, J. L. TAX PLANNING AND FEE SETTING FOR PROFITABLE LAW PRACTICE. N. Y. Journal of Taxation, Inc., 1958. 106p. $8.00. (Paper)

Braucher, Robert. DOCUMENTS OF TITLE UNDER THE UNIFORM COMMERCIAL CODE. March 1958. Phila., Committee on Continuing Legal Education, 1958. 158p. $3.00. (Paper)

Clark, W. L., and Marshall, W. L. A TREATISE ON THE LAW OF CRIMES. 6th ed. rev. by M. F. Wingersky. Chicago, Callaghan, 1958. 959p. $12.50.

Commerce Clearing House. OPERATING UNDER FEDERAL LABOR RELATIONS LAW. Chicago, 1958. 84p. $2.00. (Current law handybook ed.)

——— WHEN YOU GO TO THE TAX COURT; PROCEDURE AND PRACTICE. 18th annual ed. Chicago, 1958. 316p. $4.00. (Paper)

De Meo, J. N. CALIFORNIA DEPOSITION AND DISCOVERY PRACTICE; LAW, TEXT AND FORMS. Albany, Bender, 1958. 2 vols. $42.50.

Denonn, L. E. SECURED TRANSACTIONS. N. Y., Practising Law Inst., 1958. 178p. $2.50. (Paper)

Hall, Jerome. STUDIES IN JURISPRUDENCE AND CRIMINAL THEORY. N. Y., Oceana, 1958. 300p. $6.00.

Hawkland, W. D. SALES AND BULK SALES UNDER THE UNIFORM COMMERCIAL CODE. March 1958. Phila., Committee on Continuing Legal Education, 1958. 176p. $3.00. (Paper)

Indiana State Bar Association. CAPITAL GAIN VS. ORDINARY INCOME; COMPARATIVE TAXATION OF REAL AND PERSONAL PROPERTY TRANSACTIONS. 12th Annual Eleventh District Institute. Indianapolis, Bobbs-Merrill, 1958. 374p. $10.00.

Leslie, L. A., and Coffin, K. B. HANDBOOK FOR THE LEGAL SECRETARY. N. Y., McGraw-Hill, 1958. 378p. $5.00.

Lieberman, Barnet, and Rabin, W. W. LAW OF ZONING IN PENNSYLVANIA; A HANDBOOK. Phila., Bisel, 1958. 298p. $10.00.

Mortenson, E. R. FEDERAL TAX FRAUD LAW. Indianapolis, Bobbs-Merrill, 1958. 312p. $12.50.

National Municipal League. MODEL MUNICIPAL REVENUE BOND LAW. N. Y., 1958, 20p. $1.00.

National Probation and Parole Association. STANDARDS AND GUIDES FOR THE DETENTION OF CHILDREN AND YOUTH. N. Y., 1958. 142p. $1.00. (Paper)

O'Neal, F. H. CLOSE CORPORATION: LAW AND PRACTICE. Chicago, Callaghan, 1958, 2 vols. $30.00.

Rimel, T. L. HANDBOOK ON CRIMINAL LAW IN PENNSYLVANIA; INCLUDING COMMON LAW, STATUTORY OFFENSES, EVIDENCE. Phila., Bisel, 1958. 343p. $14.50.

Rodda, W. H. INLAND MARINE AND TRANSPORTATION INSURANCE. 2d ed. Englewood Cliffs, Prentice-Hall, 1958. 594p. $8.00.

Schwartz, Bernard. AN INTRODUCTION TO AMERICAN ADMINISTRATIVE LAW. Rev. ed. N. Y., Oceana, 1958. 260p. $7.50.

Simpson, L. P., and Dillavou, E. R. LAW FOR ENGINEERS AND ARCHITECTS. 4th ed. St. Paul, West, 1958, 506p. $7.50.

Speiser, S. M. PREPARATION MANUAL FOR AVIATION NEGLIGENCE CASES. N. Y., Federal Legal Publications, Inc., 1958. 1001p. $25.00.

U. S. Housing and Home Finance Agency. PLANNING LAWS . . . A COMPARATIVE DIGEST OF STATE STATUTES. 2d ed. Washington, Govt. Print. Off. 1958. 77p. $0.70.

U. S. National Mediation Board. ADMINISTRATION OF THE RAILWAY LABOR ACT BY THE NATIONAL MEDIATION BOARD, 1934-1957. Washington, Govt. Print. Off. 1958. 103p. $0.35. (Paper)

Review of Recent Supreme Court Decisions

George Rossman

EDITOR-in-CHARGE

Constitutional law . . . *due process*

National Association for the Advancement of Colored People v. *Alabama*, 357 U. S. 449, 2 L. ed. 2d 1488, 78 S. Ct. 1163, 26 U. S. Law Week 4489. (No. 91, decided June 30, 1958.) *On writ of certiorari to the Supreme Court of Alabama. Reversed and remanded.*

The question here was whether the State of Alabama could compel the National Association for the Advancement of Colored People to disclose its list of members in that state. The Supreme Court held that it could not.

The case began as an equity suit in the State Circuit Court, Montgomery County, when the state's Attorney General sought to enjoin the Association from engaging in further activities in Alabama on the ground that the Association had not complied with a state statute requiring foreign corporations to register with the Secretary of State. The Association contended that it was not subject to the statute and that in any event what the state sought to accomplish would violate rights of freedom of speech and assembly guaranteed under the Fourteenth Amendment. The state moved for production of a large number of the Association's records, including bank statements, leases, deeds, and lists of "members" and "agents" of the Association, saying that such records were necessary to show that the Association was conducting intrastate business within the meaning of the foreign corporation statute. The court ordered production of a substantial part of the records and, when the order was not complied with, the Association was adjudged in civil contempt and fined $10,000, the contempt judgment providing that the fine would be subject to reduction or remission if the order were complied with within five days; otherwise, it would be increased to $100,000. The Association surrendered many of its records, but refused to produce its membership lists. The state supreme court twice refused to grant certiorari, the first time for insufficiency of the petition's allegations, the second on procedural grounds, the court holding that the proper remedy was by writ of mandamus.

Mr. Justice HARLAN, speaking for a unanimous Supreme Court, reversed and remanded. The Court first disposed of the argument that it had no jurisdiction because the Alabama Supreme Court's denial rested on an independent non-federal ground. To this, the Court said that it was unable to "reconcile the procedural holding of the Alabama Supreme Court in the present case with its past unambiguous holdings as to the scope of review available [in Alabama] upon a writ of certiorari. . ." The Court rejected the argument that the Alabama rule was that the validity of contempt orders can be tested by writ of certiorari only when the defendant had no opportunity to apply for mandamus. "Even if that is indeed the rationale of the Alabama Supreme Court's present position", the Court ruled, "such a local procedural rule, although it may now appear in retrospect to form part of a consistent pattern of procedures . . . cannot avail the State here, because petitioner could not fairly be deemed to have been apprised of its existence."

The Court also upholds the Association's right to uphold the rights of its members, saying that its "nexus with them is sufficient to permit that it act as their representative".

Turning to the merits, the Court declared that there was a "vital relationship" between freedom to associate and privacy in one's associations. "Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." The Court noted that petitioner had made "an uncontroverted showing" that in the past revelation of the identity of its members had exposed them to "economic reprisal, threat of physical coercion, and other manifestations of public hostility". It was no answer, the Court declared, to say that these reprisals were not from state action but from private community pressures.

The Court distinguished *Bryant* v. *Zimmerman*, 278 U. S. 63, a case that upheld, as applied to a member of the Ku Klux Klan, a New York statute requiring a filing of lists of members of certain unincorporated associations.

The Court remanded for a determination of the merits of the state's attempt to prevent the Association from soliciting support within its borders.

The case was argued by Robert L. Carter for petitioner and by Edmon L. Rinehart for respondent.

Constitutional law . . . *due process*

Lerner v. *Casey*, 357 U. S. 468, 2 L. ed. 2d 1423, 78 S. Ct. 1311, 26 U. S. Law Week 4509. (No. 165, decided June 30, 1958.) *On appeal from the Court of Appeals of New York. Affirmed.*

The issue here was the validity of the dismissal of the appellant from his job as a conductor on the New York City subway. The dismissal was pursuant to the state's Security Risk Law, N. Y. Laws 1951, c. 233, as amended, N. Y. Laws 1954, c. 105. The Court rejected the appellant's contention that the dismissal was a denial of due process of law.

In November, 1953, the state Civil Service Commission, acting under the statute, determined that the New York City Transit Authority was a "security agency", meaning that, under the statute, the Authority now had power to suspend or dismiss any employee

Reviews in this issue by Rowland L. Young.

when there were reasonable grounds "for belief that, because of doubtful trust and reliability, the employment of such persons . . . would endanger the security or defense of the nation and the state".

In September, 1954, the appellant was summoned to appear before the Commission of Investigation in the course of an investigation being conducted under the statute. He was asked whether he was *then* a member of the Communist Party, but he refused to answer, invoking the Fifth Amendment. He adhered to this refusal at two subsequent appearances. The appellees thereupon suspended him without pay, notifying him that his suspension followed a finding that "reasonable grounds exist for belief that, because of his doubtful trust and reliability" his continued employment would endanger national and state security. When the appellant made no reply to this notice, he was dismissed. He did not exercise his statutory right to appeal to the Civil Service Commission, but instead brought this proceeding in the state courts to obtain reinstatement. Failing to obtain relief there, the petitioner took this appeal to the Supreme Court.

Mr. Justice HARLAN, speaking for the Court, rejected the contentions that the dismissal was based on findings that rested on the inference that the appellant was a member of the Communist Party, an inference that lacked any rational connection with his refusal to answer, and further that the drawing of such an inference was in derogation of the policy of the Fifth Amendment and contrary to the Court's holding in *Slochower* v. *Board of Higher Education*, 350 U. S. 551.

The appellant was not dismissed because of any inference that he was a Communist, the Court said, but rather because of the doubt created as to his "reliability" following his refusal to answer a relevant question put by his employer. "In other words," the Court said, "we read the [New York Court of Appeals'] opinion as meaning that a finding of doubtful trust and reliability could justifiably be based on appellant's lack of frankness. . ." Clearly there would be nothing unconstitutional in the dismissal if the Fifth Amendment privilege had not been invoked, the Court said, and the Court could see nothing in the case that made the Fifth Amendment privilege available to the appellant.

Mr. Justice FRANKFURTER, in an opinion concurring in this case and in No. 63, *infra*, stressed the fact that the employees in the two cases were discharged because their employers had sought to satisfy themselves of their dependability and had been balked in their inquiries. The employees were not discharged, the opinion declared, because of any findings that they were disloyal.

The CHIEF JUSTICE wrote a dissenting opinion. In his view, the fact that the petitioner in No. 63 had pleaded the Fifth Amendment before a congressional committee was "inextricably involved in the Board's decision to discharge him", and the *Slochower* case makes such a ground an invalid one for dismissal of a public employee.

The CHIEF JUSTICE also noted that he was joined in this dissent by Mr. Justice BLACK and Mr. Justice DOUGLAS, and that he joined in Mr. Justice BRENNAN's dissent in No. 165.

Mr. Justice DOUGLAS joined by Mr. Justice BLACK dissented on the ground that the employees in the two cases were discharged because they refused to answer questions about Communist Party membership, invoking a constitutional right. "I would allow no inference of wrongdoing to flow from the invocation of any constitutional right", this opinion declared.

Mr. Justice BRENNAN wrote a dissenting opinion, which took the position that each petitioner had been branded as disloyal without due process of law. The Court, the dissent noted, "refuses to pierce the transparent denials that each of these employees was publicly branded disloyal."

The case was argued by Leonard B. Boudin for appellant and by Daniel T. Scannell for appellee.

Constitutional law . . . *due process*

Beilan v. *Board of Public Education*, 357 U. S. 399, 2 L. ed. 2d 1414, 78 S. Ct. 1317, 26 U. S. Law Week 4512. (No. 63, decided June 30, 1958.) *On writ of certiorari to the Supreme Court of the Commonwealth of Pennsylvania. Affirmed.*

This decision affirmed dismissal of a public school teacher in Pennsylvania who was discharged for "incompetency" after he refused to answer questions put to him by the Superintendent of Schools about his alleged past connections with the Communist Party.

The petitioner was called in to the Superintendent's office and told that he would be asked one question and that he could then decide whether he wished to answer other questions of the same type. The question was whether or not he had been the Press Director of the Professional Section of the Communist Political Association in 1944. Petitioner asked for and was granted permission to consult counsel before answering. When he appeared again before the Superintendent, he was warned that the affair "was a very serious and a very important matter and that failure to answer the questions might lead to his dismissal." The petitioner declined to answer the first question and any other "questions similar to it" or "questions about political and religious beliefs". The School Board then conducted hearings upon the charge that the refusal to answer constituted "incompetency" under Section 1122 of the Pennsylvania Public School Code of 1949. At the hearing, it was conceded that no question of loyalty was at issue. The Board found that the charge of incompetency had been sustained and discharged the petitioner. Appeal was taken through various administrative and judicial tribunals, and the state supreme court eventually upheld the dismissal.

Mr. Justice BURTON spoke for the Court in affirming. The Court said that by engaging to teach in public schools the petitioner did not give up his right to freedom of belief, speech or association. "He did, however," the Court said, "undertake obligations of frankness, candor and cooperation in answering inquiries made of him by his employing Board examining his fitness to serve it as a public school teacher." There is no constitutional requirement that "a teacher's classroom conduct be the sole basis for determining fitness", the Court said. "Fitness for teaching depends on a broad range of factors."

The Court found no constitutional invalidity in the Pennsylvania court's holding that "incompetency" includes "deliberate and insubordinate refusal to answer the questions of his administrative superior in a vitally important matter pertaining to his fitness".

The case was argued by John Rogers Carroll for petitioner and by C. Brewster Rhoads for respondent.

Constitutional law . . . *search and seizure*

Jones v. *United States*, 357 U. S. 493, 2 L. ed. 2d 1514, 78 S. Ct. 1253, 26 U. S. Law Week 4498. (No. 331, decided June 30, 1958.) *On writ of certiorari to the United States Court of Appeals for the Fifth Circuit. Reversed.*

This case reversed a conviction of various violations of the federal liquor laws stemming from and including the possession of an unregistered still. The reversal was based upon a holding that the federal officers who made the arrest obtained their evidence by an unlawful search and seizure.

The federal agents received a lead that the petitioner's home was the site of an illicit distillery. A visit to the neighborhood led to the discovery of a quantity of spent mash in a hollow behind the petitioner's house, and the agents detected the odor of hot mash coming from the house and heard inside the sounds of voices and of a blower burner, commonly used to heat distilleries. They returned with a daytime search warrant, but, perhaps under the theory that "moonshine" is better found at night, delayed executing it until after it had expired, keeping the house under surveillance meanwhile. After dark, a truck entered the yard, there were loud noises, and when the truck sought to regain the public road, it became stuck in the driveway. The agents arrested the two men in the truck and seized 413 gallons of nontaxpaid liquor. The agents then went to the house and brushed past the petitioner's wife who sought to block their entry. A thorough search of the house disclosed a boiler, fuel burner and fifteen barrels. The petitioner was arrested when he returned to his house about an hour after the search had been completed. The Court of Appeals affirmed the conviction.

Mr. Justice HARLAN delivered the opinion of the Supreme Court reversing. Although the point was ambiguous, the Court said that a consideration of the record seemed to indicate that the courts below considered the search and seizure justified because the agents had probable cause to believe that petitioner's house contained contraband materials that were being used in the commission of a crime, not because the search and seizure were incident to petitioner's arrest. This was a violation of the Fourth Amendment, the Court held, saying "Were federal officers free to search without a warrant merely upon probable cause to believe that certain articles were within a home, the provisions of the Fourth Amendment would become empty phrases, and the protection it affords largely nullified."

Mr. Justice BLACK noted that he concurred in the result.

Mr. Justice CLARK, joined by Mr. Justice BURTON wrote a dissenting opinion which argued that the agents had good reason to believe that the petitioner was in the house and that they had the authority to enter to make an arrest.

The case was argued by Wesley R. Asinof for petitioner and by Eugene L. Grimm for the United States.

Constitutional law . . . *segregation*

Cooper v. *Aaron*, 357 U.S. —, 3 L. ed. 2d 1, 78 S. Ct. 1401, 27 U.S. Law Week 4001. (No. 1, August Special Term, 1958, decided September 29, 1958.) *On writ of certiorari to the United States Court of Appeals for the Eighth Circuit. Affirmed.*

In this land-mark decision, the Supreme Court refused to allow suspension of the court-approved plan to desegregate the high schools of Little Rock, Arkansas.

The case began when the Little Rock Board of Education secured an order from the District Court postponing the scheduled desegregation of the high schools on the ground that conditions of "chaos, bedlam and turmoil" prevailed at Central High School during the past year following the forced admission of eight Negro students. The Board cited public hostility and the official attitudes of the Governor and Arkansas Legislature that made maintenance of a "sound educational program" impossible.

The Negro students appealed the postponement to the Court of Appeals, which, after a series of pleadings and motions, reversed the District Court. The Supreme Court took the unusual step of calling a special term to hear the petition for postponement. On September 12, it handed down a *per curiam* opinion affirming the Court of Appeals. This opinion sets forth the Court's reasoning behind the brief *per curiam* decision.

The opinion is extraordinary in that it is signed by all nine Justices and takes pains to emphasize the unanimity of the Court. It then goes on to review the facts of the situation at Little Rock, including the "drastic action" of the Governor when the School Board attempted to carry out the plan to admit Negro students, the use of "military guards by state authorities" at the school and later the dispatch of Regular Army troops to the scene.

The Court then turned to the Board's plea for a two-and-a-half-year delay in carrying out the plan to desegregate. Conceding that the Board had acted in good faith, the Court declared that the petition for delay had to be considered "in the light of the fact, indisputably revealed by the record before us, that the conditions [the Board depicts] are directly traceable to the actions of legislators and executive officials of the State of Arkansas, taken in their official capacities, which reflect their own determination to resist this Court's decision in the *Brown* case and which have brought about violent resistance to that decision in Arkansas."

The *Brown* case, according to this opinion, held that the "Fourteenth Amendment forbids States to use their government powers to bar children on racial grounds from attending schools where there is state participation through any arrangement, management, funds or property". "The constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and Legislature", the Court said.

The Court conceded that responsi-

bility for public education is "primarily" the concern of the states, but it declared that the states' responsibilities in education "like every other state activity must be exercised consistently with federal constitutional requirements".

The Court noted that three new members have come to its Bench since the decision of *Brown* v. *Board of Education* and it announced that all three "are at one with the Justices still on the Court who participated in that basic decision as to its correctness, and that decision is now unanimously reaffirmed".

Mr. Justice FRANKFURTER wrote a concurring opinion which was handed down on October 6. The concurring opinion notes unreserved participation in the joint opinion and sets forth its author's individual views of the case.

The case was argued by Thurgood Marshall for petitioners, by Richard C. Butler for respondents and by Solicitor General Rankin for the United States by invitation of the Court.

Criminal law . . . *sufficiency of warrant*

Giordenello v. *United States*, 357 U.S. 480, 2 L. ed. 2d 1503, 78 S. Ct. 1245, 26 U.S. Law Week 4494. (No. 549, decided June 30, 1958.) *On writ of certiorari to the United States Court of Appeals for the Fifth Circuit. Reversed.*

In this decision, the Court reversed a conviction of unlawful purchase of narcotics on the ground that the arrest warrant was improper and therefore the evidence seized at the time of the arrest had been obtained illegally.

The warrant was issued by a United States Commissioner at Houston, Texas, and was based on a written complaint of an agent of the Federal Bureau of Narcotics. The complaint read in part: "The undersigned complainant being duly sworn states: That on or about January 26, 1956, at Houston, Texas in the Southern District of Texas, Veto Giordenello did receive, conceal, etc., narcotic drugs, to-wit: heroin hydrochloride with knowledge of unlawful importation; in violation of Section 174, Title 21, United States Code. . ." Giordenello was seized with a paper bag in his possession containing heroin. The Government conceded that, since the agent had no search warrant, the heroin was admissible in evidence only if the arrest was legal.

Speaking for the Supreme Court, Mr. Justice HARLAN held that the arrest warrant was defective because it did not comply with the requirement of Rule 4 of the Federal Rules of Criminal Procedure that the complaint show "that there is probable cause to believe that [such] an offense has been committed and that the defendant has committed it. . ." The complaint contained no affirmative allegation that the affiant spoke with personal knowledge, the Court noted, it did not indicate any sources for the affiant's belief and it did not set forth any other sufficient basis upon which a finding of probable cause could be made. "In these circumstances", said the Court, "it is difficult to understand how the Commissioner could be expected to assess independently the probability that petitioner committed the crime charged. Indeed, if this complaint were upheld, the substantive requirements would be completely read out of Rule 4, and the complaint would be of only formal significance, entitled to perfunctory approval by the Commissioner." A further contention by the Government, that the arrest was legal apart from the warrant, was dismissed on the ground that the Government had invoked this argument for the first time before the Supreme Court.

Mr. Justice CLARK dissented in an opinion in which he was joined by Mr. Justice BURTON and Mr. Justice WHITTAKER. The dissent argued that it was not necessary to allege personal knowledge or state sources for the affiant's belief in a complaint. The agent swore that "petitioner 'did receive [and] conceal heroin' ", the dissent said, "It therefore follows as the night does day that 'probable cause' existed, and the Commissioner had no recourse other than to issue the warrant. Neither the Court nor petitioner points out what more must be alleged."

The case was argued by William F. Walsh for petitioner and by John L. Murphy for the United States.

Criminal law . . . *multiple punishment*

Gore v. *United States*, 357 U.S. 386, 2 L. ed. 2d 1405, 78 S. Ct. 1280, 26 U.S. Law Week 4532. (No. 668, decided June 30, 1958.) *On writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit. Affirmed.*

In this case, the petitioner was convicted of making two illegal sales of narcotics, each of which constituted a violation of three separate statutes. The question was the validity of the sentence, which treated two sales as six separate violations.

The sales were of twenty capsules of heroin and three capsules of cocaine on February 26, 1955, and of thirty-five capsules of heroin on February 28. The petitioner was convicted on two counts of violating Section 4705(a) of the Internal Revenue Code, the sale of drugs not "in pursuance of a written order" of the person to whom the drugs were sold on the requisite Treasury form, two counts of violating Section 4704(a), selling and distributing drugs not in the original stamped package, and on two counts of violation of Section 2(c) of the Narcotics Drugs Import and Export Act, of selling drugs with the knowledge that they had been unlawfully imported. The trial judge imposed a sentence of one to five years on each count, the first three to run consecutively, the sentences on the last three to run concurrently with the first three. The total sentence was thus three to fifteen years. Petitioner contended that each transaction constituted one offense. The Court of Appeals affirmed the judgment and the sentence.

The Court affirmed, speaking through Mr. Justice FRANKFURTER. The Court refused an invitation to overrule its decision in *Blockburger* v. *United States*, 284 U.S. 299, a case almost identical on the relevant facts. The Court pointed out that each of the three statutory provisions had different origins both in item and in design, Section 4705(a) deriving from the Act of December 17, 1914, Section 4704(a) deriving from the Revenue Act of 1918, and Section 2(c) deriving from the Act of February 9, 1909. "It seems more daring than convincing to suggest that three different enactments,

each relating to a separate way of closing in on illicit distribution of narcotics, passed at three different periods, for each of which a separate punishment was declared by Congress, somehow or other ought to have carried with them an implied indication by Congress that if all these three different restrictions were disregarded, but, forsooth, in the course of one transaction, the defendant should be treated as though he committed only one of these offenses" the Court remarked.

The CHIEF JUSTICE wrote a dissenting opinion which argued that the Congress had provided "three separate avenues by which to prosecute one who traffics in narcotics", not "three cumulative punishments for the defendant who consummates a single sale".

Mr. Justice DOUGLAS, joined by Mr. Justice Black, wrote a dissenting opinion which took the position that the convictions here violated the provisions against double jeopardy and that the *Blockburger* case should be overruled.

Mr. Justice BRENNAN wrote a dissenting opinion which argued that *Blockburger* should be distinguished from the present case. ". . . under *Blockburger*" this opinion said, "punishment under separate sections can be sustained only if 'each provision requires proof of a fact which the other does not' ".

The case was argued by Joseph L. Rauh, Jr., and James H. Heller for petitioner and by Beatrice Rosenberg for the United States.

Criminal law . . . *right to counsel*

Crooker v. *California*, 357 U.S. 433, 2 L. ed. 2d 1448, 78 S. Ct. 1287, 26 U.S. Law Week 4504. (No. 178, decided June 30, 1958.) *On writ of certiorari to the Supreme Court of California. Affirmed.*

In this decision, the Court held that failure of the authorities to allow an accused to summon an attorney during interrogation after his arrest did not violate the due process clause of the Fourteenth Amendment.

The petitioner was tried, convicted and sentenced to death for the murder of his paramour. The state supreme court affirmed the conviction. Petitioner contended that a confession admitted in evidence over his objection had been coerced and that even if the confession was voluntary it had been made while he was without counsel after his request for an attorney had been denied.

Mr. Justice CLARK, speaking for the Supreme Court, saw nothing in the record to indicate coercion in the obtaining of the confession. The accused was held about fourteen hours after the arrest during which time he was given food and allowed to smoke. The Court stressed the fact that the accused was a college graduate, had had a year of law school and appeared to be well aware of his rights. The Court concluded that the confession was voluntary. It conceded that the right to counsel was an important one at "any part of the pretrial proceedings" but it could not find here a prejudice of the accused's rights that infected "his subsequent trial with an absence of 'that fundamental fairness essential to the very concept of justice' ". The facts might show a violation of the state law, the Court said, but not a denial of due process.

Mr. Justice DOUGLAS wrote a dissenting opinion in which the CHIEF JUSTICE, Mr. Justice BLACK and Mr. Justice BRENNAN joined. The dissent took the position that the right to counsel was perhaps more important right after the arrest than at any other time and that denial of it then was a denial of due process. The dissent argued that such a rule was necessary to prevent the prejudice of the accused's rights by the use of "third degree" methods.

The case was argued by Robert W. Armstrong for petitioner and by William E. James for respondent.

Criminal law . . . *right to counsel*

Cicenia v. *Lagay*, 357 U.S. 504, 2 L. ed. 2d 1523, 78 S. Ct. 1297, 26 U.S. Law Week 4501. (No. 177, decided June 30, 1958.) *On writ of certiorari to the United States Court of Appeals for the Third Circuit. Affirmed.*

The issue in this case was similar to that in the *Crooker* case, *supra*.

The police in Newark, New Jersey, had information implicating the petitioner in a six-months-old slaying. They left word at his home to report to the police. The petitioner consulted a lawyer and took the lawyer's advice to report as requested. The police interrogated him for about twelve hours, during which time they obtained a confession. Meanwhile, the police had refused the repeated requests of the attorney to see his client. Petitioner attempted later to suppress the confession and, failing that, on advice of counsel, entered a plea of *non vult*. He received a life sentence.

Petitioner then began habeas corpus proceedings in the state courts, was unsuccessful, and turned to the federal courts, contending that the plea of *non vult* was actuated by the existence of the confession, that the confession was coerced and that failure to permit him to see his lawyer during the interrogation was a denial of due process. Both the District Court and the Court of Appeals denied the writ.

Mr. Justice HARLAN spoke for the Supreme Court in affirming. The petitioner had apparently abandoned his contention that the confession was coerced but he continued to assert that the confession was vitiated by the refusal of the police to allow him to confer with his attorney during the interrogation. The Court noted that this contention was largely disposed of by the decision in the *Crooker* case. It expressed "strong distaste" for the episode, but it declared that "in judging whether state prosecutions meet the requirements of due process, [we must seek] to achieve a proper accommodation by considering a defendant's lack of counsel one pertinent element in determining from all the circumstances whether a conviction was attended by fundamental unfairness." The Court refused to accept the "inflexible" rule contended for by the petitioner that any state denial of a defendant's request to confer with counsel constitutes a denial of due process.

Mr. Justice DOUGLAS, joined by the CHIEF JUSTICE and Mr. Justice BLACK, wrote a dissenting opinion which expressed regret that the Court had not taken the occasion "to bring our decisions into tune with the constitutional

requirement for fair criminal proceedings against the citizen".

The case was argued by Dickinson R. Debevoise for petitioner and by C. William Caruso for respondent.

Criminal law . . . *voluntary nature of confession*

Ashdown v. *Utah*, 357 U.S. 426, 2 L. ed. 2d 1443, 78 S. Ct. 1345, 26 U.S. Law Week 4520. (No. 158, decided June 30, 1958.) *On writ of certiorari to the Supreme Court of the State of Utah. Affirmed.*

This was another decision in which the Court decided from an examination of the record that a confession obtained during police investigation was not obtained in violation of the accused's constitutional rights.

The petitioner was convicted of poisoning her husband. After about four and a half hours of questioning by the sheriff and the district attorney, she confessed to putting strychnine in her husband's lemonade. The conviction was affirmed by the Utah Supreme Court. On appeal, the petitioner had stressed the fact that the district attorney had told her during the interrogation an experience of his in military service when he had been accused of killing five men, but, by co-operating with the investigating officials, had cleared himself of all blame.

Mr. Justice BURTON, speaking for the Supreme Court, affirmed. The Court rejected the contention that the district attorney's statement to the petitioner during her interrogation was an implied promise of immunity or leniency to be exercised in return for a confession. The statement was made long before she confessed and in connection with an attempt to decide whether the death could have been accidental, the Court said. The Court noted that a study of the record indicated that the interrogation of the petitioner was temperate and courteous and had shown a respect for her feelings.

Mr. Justice DOUGLAS, joined by Mr. Justice BLACK, wrote a brief dissenting opinion. This opinion noted that the petitioner's uncle and father had appeared at the sheriff's office shortly after her arrest and were denied admission, having been told that the petitioner had a lawyer at her side—which was not the fact. "The request of a next friend outside the jail that counsel be furnished the accused who was inside under examination should be demand enough" the dissent declared.

The case was argued by J. Vernon Erickson for petitioner and by Walter L. Budge for respondent.

Public officers . . . *dismissal by the President*

Wiener v. *United States*, 357 U.S. 349, 2 L. ed. 2d 1377, 78 S. Ct. 1275, 26 U.S. Law Week 4522. (No. 52, decided June 30, 1958.) *On writ of certiorari to the United States Court of Claims. Reversed.*

The issue here was the power of the President to remove a member of the War Claims Commission. The Court held that the Chief Executive had no such authority.

The petitioner was appointed to the War Claims Commission in 1950 by President Truman, under the War Claims Act of 1948 which established the Commission and provided that it was to wind up its affairs not later than three years after the expiration of the time for filing claims. No provision was made for the removal of a commissioner. In 1953, President Eisenhower requested the petitioner's resignation. Petitioner refused to heed the request and the President proceeded to remove him saying "I regard it as in the national interest to complete the administration of the War Claims Act of 1948, as amended, with personnel of my own selection." The President sent the names of new commissioners to the Senate, but the Senate had not confirmed the new appointees when the Commission was abolished by Reorganization Plan No. 1 of 1954, 68 Stat. 1279. The petitioner brought this suit in the Court of Claims for recovery of his salary as War Claims Commissioner from December 10, 1953, the date of his removal, to June 30, 1954, the last day of the Commission's existence. A divided Court of Claims dismissed the petition.

Speaking for a unanimous Supreme Court, Mr. Justice FRANKFURTER reversed. The Court rests its opinion upon *Humphrey's Executor* v. *United States*, 295 U.S. 602, in which the Court had held that the President's power to remove officials included only "purely executive officers" and not officers who have duties of a "quasi-judicial character". The ground of President Eisenhower's removal of the petitioner, the Court noted, was exactly the same as President Roosevelt's for removal of a member of the Federal Trade Commission. Both removals, said the Court, "express the assumption that the agencies of which the two Commissioners were members were subject in the discharge of their duties to the control of the Executive. An analysis of the Federal Trade Commission Act left this Court in no doubt that such was not the conception of Congress in creating the Federal Trade Commission. The terms of the War Claims Act of 1948 leave no doubt that such was not the conception of Congress regarding the War Claims Commission." The Court reviewed the legislative history of the War Claims Act to show that it supported this view of the statute.

The case was argued by J. H. Wachtel for petitioner and by Solicitor General Rankin for the United States.

ANNOUNCEMENT

of the

1959 Essay Contest

Conducted by the

AMERICAN BAR ASSOCIATION

Pursuant to the terms of the bequest of Judge Erskine M. Ross, deceased.

INFORMATION FOR CONTESTANTS

Time When Essay Must Be Submitted: On or before April 1, 1959.

Amount of Prize: Three Thousand Dollars.

Subject To Be Discussed:

"IS THERE FEDERAL ENCROACHMENT ON STATE RIGHTS WHICH SHOULD BE CURBED?"

Eligibility:

The contest will be open to all members of the Association in good standing, including new members elected prior to March 1, 1959 (except previous winners, members of the Board of Governors, officers and employees of the Association), who have paid their annual dues to the Association for the current fiscal year in which the essay is to be submitted.

No essay will be accepted unless prepared for this contest and not previously published. Each entryman will be required to assign to the Association all right, title and interest in the essay submitted.

Instructions:

All necessary instructions and complete information with respect to number of words, number of copies, footnotes, citations, and means of identification, may be secured upon request to the

ROSS ESSAY CONTEST
AMERICAN BAR ASSOCIATION

1155 East Sixtieth Street **Chicago 37, Illinois**

What's New in the Law

The current product of courts, departments and agencies

George Rossman · EDITOR-IN-CHARGE

Richard B. Allen · ASSISTANT

Adoption . . .
religion-matching

Splitting sharply four-to-three, the New York Court of Appeals has refused to upset an adoption on the ground that the child, born of a Catholic mother, was adopted by a Protestant couple.

The natural mother, married but separated, claimed that the child was that of her paramour. Prior to the birth she told her doctor that she didn't want the child and asked him to make arrangements for a placement. Shortly after the delivery she executed a consent in which she declared that she "does not at the present time embrace any religious faith". A year later, however, when she appeared to object to the foster parents' petition, she declared that she was a Catholic, that she didn't know that her child would be placed in a Protestant home and that she wanted him back. The adoption court turned down her protests.

Appealing, the natural mother contended that her consent was not effective and that the New York statute required the foster parents to be of the same religious faith as the child. The court rejected both arguments. It said that whether the consent was good was immaterial, since the natural mother had abandoned the child by virtue of the arrangements made at the time of the birth and the New York law required no consent in cases of abandonment. On the other contention, the Court noted that the statute provided for religion-matching "when practicable"—a term the Court found was designed to accord "the trial judge a discretion" in exceptional circumstances. The Court recognized that the statute expressed the "settled policy" of the state, but it remarked that the policy would not deny custody "where a child has been accepted by [adoptive parents] following a declaration or representation by the mother, which may or may not be true, that she does not embrace any religious faith".

The dissenters called the consent "completely illegal" and declared that the religion-matching statute had been violated because there had been no fact-showing that would take the case from the "when practicable" category.

(*In re Maxwell's Adoption*, New York Court of Appeals, June 25, 1958, Fuld, J., 4 N.Y. 2d 429, 151 N.E. 2d 848.)

Courts . . .
assignment of judges

Improvement in the administration of justice in Michigan cannot be impeded by the reluctance of a trial judge to accept assignment to another circuit. The Supreme Court of Michigan has ruled that it has power to assign circuit judges "in such manner and to such extent as to this Court shall seem appropriate and necessary in order to improve the administration of justice".

The Court found power to do this in provisions of the state's constitution granting the Supreme Court "superintending control over all inferior courts" and stating that circuit judges might hold court in circuits other than the one in which they are elected "as may be provided by law". The Court declared that "superintending control" is broad and extraordinary and that the constitutional provisions invested the Court with power to make assignments of judges even in the absence of implementing legislation.

But in Michigan legislation has been enacted creating a court administrator, who, under the supervision of a committee of the Court, makes assignments from one circuit to another. The statute spells out in further detail the powers of the Court.

The case arose as an original contempt action in the Supreme Court. A circuit judge had refused to comply with the court administrator's assignment directive. For the refusal he was adjudged in contempt and ordered to pay $250.

(*In re Assignment of Huff*, Supreme Court of Michigan, June 5, 1958, Dethmers, J., 91 N.W. 2d 613.)

Criminal Law . . .
prior convictions

Although critical of the procedure, the Court of Appeals for the Third Circuit has refused to say the Pennsylvania rule that prior convictions may be shown in evidence at a murder trial violates federal constitutional rights.

Under Pennsylvania law the jury sets the punishment when it convicts of murder. Evidence of prior convictions of the defendant is admissible under Pennsylvania cases for the purpose of aiding the jury in arriving at a punishment. The evidence, however, is permitted to come in during the state's case-in-chief, with the jury being instructed not to consider it until it has determined guilt or innocence.

The Court declared:

"We conclude that the Pennsylvania procedure here under attack does not pass the bounds laid down for state procedure by the due process clause. This is, of course, not to say that we would approve the procedure if its propriety were open to us. On the contrary, we think that it would be very much better practice to permit the jury to consider first the guilt of the accused and then, after rendering a verdict of guilty, to receive evidence and render a second verdict on the question of penalty."

On denial of a petition for rehearing, two judges of the Court dissented, but

---

Editor's Note: Virtually all the material mentioned in the above digests appears in the publications of the West Publishing Company or in The United States Law Week.

no member of the panel which heard the case voted for rehearing.

(*U.S. ex rel. Thompson* v. *Price*, United States Court of Appeals, Third Circuit, August 14, 1958, rehearing denied September 29, 1958, Maris, J.)

Military Law . . . *status of cadets*

Delving into service history, the United States Court of Military Appeals has concluded that under the Uniform Code of Military Justice a West Point cadet must be considered as an officer for the purpose of imposing the punishment of separation from the service. Accordingly, the Court has held, a court martial cannot give a cadet a dishonorable or bad-conduct discharge, the method of separation traditionally used for enlisted men; he must be separated by dismissal, the procedure employed for officers.

The Court found the historical picture somewhat unclear. In 1819 Attorney General Wirt in an opinion compared cadets to "enlisted soldiers", but in 1855 Attorney General Cushing declared that they were neither enlisted men nor officers, but a special breed that he termed "inchoate officers". The Court liked the latter characterization and concluded that prior to enactment of the Uniform Code cadets were neither officers nor enlisted men, but members of a unique class.

Then the Court, primarily through an examination and comparison of the appellate guarantees in the Code to enlisted men, warrant officers, cadets, midshipmen and officers, determined that cadets are in the same category as officers insofar as punitive separation from the service is concerned. The cadet's separation from the service "should not be equated with that of an enlisted man", it declared in concluding that a court martial had erred in imposing a bad-conduct discharge on a cadet.

(*U.S.* v. *Ellman*, United States Court of Military Appeals, September 5, 1958, Latimer, J., 9 U.S.C.M.A. 549.)

Radio and Television . . . *channel switch*

The Court of Appeals for the District of Columbia Circuit has dismissed the appeal of an applicant television broadcaster that was dealt out in a bizarre St. Louis TV channel switch, but with a suggestion that the Federal Communications Commission should have the power to inquire more fully into the payments that accompanied the switch.

The Columbia Broadcasting System and four others applied for a license for Channel 11 in St. Louis. During the comparative hearings which followed, one of the applicants withdrew because it felt that Columbia would get the license. The construction permit was in fact awarded to Columbia. The three unsuccessful applicants appealed, but in the meanwhile CBS purchased the station operating on Channel 4 in St. Louis, and contracted to sell its Channel 11 permit to one of the unsuccessful applicants on condition that the buyer pay $200,000 each to the two other losers and that all of them withdraw their appeal. The transfers were approved by the Commission.

The applicant that had withdrawn—the petitioner in the instant case—preceived that it had gotten no slice of the melon and it requested the Commission to re-open the comparative hearing and make a new award of the channel. The Commission, on the ground that by withdrawing the petitioner had no standing, dismissed the petition. As a basis for its action the Commission relied on its interpretation of the 1952 amendment to §310(b) of the Communications Act, 47 U.S.C.A. §310(b), under which it found that it had no power in a construction permit assignment proceeding to consider the comparative qualifications of prior unsuccessful applicants, but only whether the assignee proposed by the permit holder was qualified.

The Court agreed with the FCC that the petitioner had no standing and that its appeal must be dismissed, but it expressed some reluctance to subscribe wholeheartedly to the Commission's interpretation of §310(b). It complained that this view of the law in effect allows a private entity to decide who shall receive a broadcast license—a "serious gap" in radio regulatory law. "It is difficult", the Court declared, "to rationalize a sound justification for payment of $100,000 by the assignee of the original permitee to the two unsuccessful applicants for abandoning their appeals in this Court. The Commission should (if it does not under the existing statute) have power to inquire into the possible impact of these payments on the public interest."

(*St. Louis Amusement Company* v. *Federal Communications Commission*, United States Court of Appeals, District of Columbia Circuit, August 28, 1958, Burger, J.)

Radio and Television . . . *influence*

Last spring, when the Federal Communications Commission asked the United States Court of Appeals for the District of Columbia Circuit to remand to it the proceeding in which it had made an award of Channel 10 in Miami, and which was before the Court on appeal, it furnished the Court a transcript of the hearings conducted by the Special Subcommittee on Legislative Oversight of the House Interstate and Foreign Commerce Committee. In remanding the Channel 10 case the Court took note that public charges had been made during the hearings that one member of the FCC who participated in the proceeding and has since resigned should have disqualified himself because of his involvement with persons interested in the outcome of the award. The remandment was made for the purpose of permitting the Commission to determine whether its decision was void because that commissioner participated in it.

Now the Commission has discovered that the Court has been reading the transcript with diligence. Without being requested by the Commission, the Court has sent back to the Commission a proceeding in which, after a comparative hearing among three competitors, an award of Channel 5 in Boston was made to WHDH, a station owned by the *Boston Herald-Traveler*. The Court noted that commencing on page 4,180 of Volume 28 of the hearings transcript, it was disclosed that various individuals connected with the license applicants conferred with the same commissioner while the award of the channel was under consideration by the Commission.

The Court was quick to say that

there was nothing shown at present to make it appear that the commissioner should have disqualified himself in this case, but it directed the FCC to hold an evidentiary hearing and to determine (1) whether any member of the Commission should have disqualified himself, (2) whether any person influenced any commissioner except by the "recognized and public process of adjudication", (3) whether any party secured or knew of any misconduct which may be found to have occurred, (4) whether the award of Channel 5 is void or voidable and any applicant is disqualified to receive a license, and (5) whether the conduct of any applicant, if not disqualifying, "has been such as to reflect adversely upon such applicant from a comparative standpoint".

The Court directed the Commission to notify the Attorney General of the hearing so that he might appear as *amicus curiae*. "Improper influence, if established, going to the very core of the Commission's quasi-judicial powers is certainly critical," the Court declared.

Meanwhile the Court made a definitive finding that there were no valid grounds for upsetting the award of the channel to WHDH. It did this so that if the ordered hearing turned up nothing, the litigation would be at an end.

(*Massachusetts Bay Telecasters, Inc.* v. *Federal Communications Commission*, United States Court of Appeals, District of Columbia Circuit, July 31, 1958, Danaher, J.)

States . . .
medical licensing

The way for disappointed chiropractors to use federal courts to obtain licenses in states which license only doctors with standard medical educations may have been opened by the Court of Appeals for the Fifth Circuit.

Forty chiropractors filed a suit alleging that the Louisiana Medical Practice Act unconstitutionally discriminates against them because it does not permit them to be licensed unless they fulfill the single standard of requirements for licensing of medical doctors. A three-judge district court dismissed the complaint.

Now the Fifth Circuit, with one judge dissenting, has reversed and has held that "the plaintiffs are entitled to a day in court, to an opportunity to prove their case". The Court conceded that the chiropractors' case seemed foreclosed by a 1926 Louisiana case, but it surmised that there has been "enormous progress away from the days when barbers did the blood letting", and that it could not dismiss the chiropractors' bid for a place in the Louisiana medical picture without a hearing.

The dissenter could see no point to permitting the chiropractors to attack the licensing act in the fact of an absence of unreasonableness in the statute or in its administration. "It is not for us", he remarked, "to make a law for chiropractors . . . [T]he state is under no obligation to license every organized group giving treatments for health."

(*England* v. *Louisiana State Board of Medical Examiners*, United States Court of Appeals, Fifth Circuit, September 9, 1958, per curiam.)

Torts . . .
loss of consortium

Although importuned to do so because of recent cases in other states, the New York Court of Appeals has refused to recognize a wife's cause of action for loss of consortium resulting from personal injuries to her husband.

If any change is to be made, the Court indicates it might be to strike down the husband's right of action for loss of his wife's consortium. "The argument that equality of the sexes calls for a change", the Court remarked, "overlooks that the husband's right to damages for loss of consortium is based on an outworn theory. It derives from the time when the wife was regarded in law in some respects as her husband's chattel. He was allowed damages for injury to her in much the same manner that he would have been allowed damages for the loss or injury of one of his domestic animals." The Court also quoted with approval from 18 *Law and Contemporary Problems* 219, in which Professor Jaffe argues that the emancipation of women demands the restriction or abolition of the loss-of-consortium action, rather than its extension.

The decision is not novel in New York; it follows settled law there. Jurisdictions that have recently adopted the remedy are the United States Court of Appeals for the District of Columbia Circuit in *Hitaffer* v. *Argonne Company*, 183 F. 2d 811; Georgia in *Brown* v. *Georgia-Tennessee Coaches, Inc.*, 77 S.E. 2d 24; and Iowa in *Acuff* v. *Schmit*, 78 N.W. 2d 480.

(*Kronenbitter* v. *Washburn Wire Company*, Court of Appeals of New York, June 25, 1958, Van Voorhis, J., 4 N.Y. 2d 524, 151 N.E. 2d 898, 176 N.Y.S. 2d 354.)

Trials . . .
right to act pro se

A litigant in a federal court does not have a constitutional right to appear *pro se* and also be represented by counsel, the Court of Appeals for the Eighth Circuit has decided.

The litigant in the case contended that 28 U.S.C.A. §1654 is too vague in providing that "parties may plead and conduct their own cases personally or by counsel" as provided by rules of court. He claimed a constitutionally protected right to act for himself and employ licensed counsel at the same time during the trial.

The Court had little trouble in finding that the statute was clear and that it meant just what it said: parties may conduct their own cases personally *or* by counsel, but not both. "We find nothing", the Court remarked, "in our research to justify appellant's assertion that he possesses the fundamental right to appear for himself personally and also be represented by counsel at the same time. Denial of the right to appear in both capacities is not, in our opinion, violative of 'due process of law' as secured by the Fifth Amendment." The Court, examining English common law, found that the traditional concept of representation by counsel is that he substitutes himself for the litigant.

Another basis for the Court's decision was the power and responsibility of a federal judge in governing and controlling the conduct of the trial, under which, it added, the trial judge has power to make the party choose how he is to appear.

(*Brasier* v. *Jeary*, United States Court of Appeals, Eighth Circuit, June 23, 1958, Vogel, J.)

BAR ACTIVITIES

One of the greatest associations of lawyers in the United States of less than national scope is The Association of the Bar of the City of New York; but when it was organized, in 1870, it was by no means the pioneer in its field.

The first bar association in point of time was the Law Library Company, whose articles of association were signed by seventy-two attorneys at law in Philadelphia on March 13, 1802. This society, now known as the Philadelphia Bar Association, has continued to the present time under its original charter.

In Pittsburgh, on November 12, 1831, the Law Academy was organized by fifteen lawyers. It met monthly for a number of years. The Pittsburgh Bar Association, now The Allegheny County Bar Association, was chartered by Act of Assembly on February 26, 1870. The Lancaster Law Library Association was incorporated on April 15, 1867. Probably many other local bar associations in Pennsylvania antedate the formation of the American Bar Association in 1878.

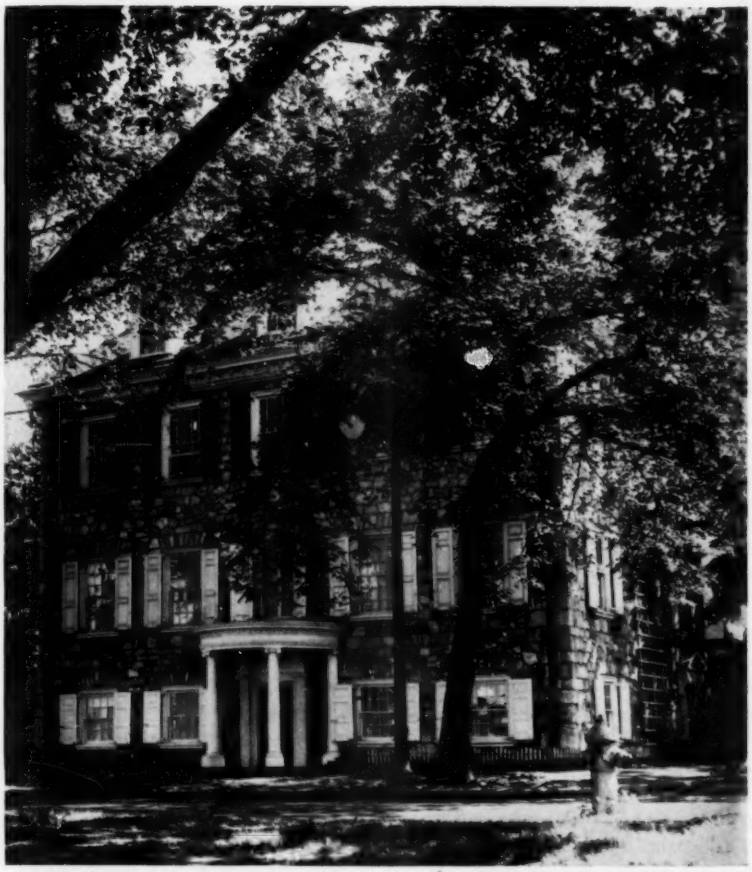
On November 1, 1894, over seven hundred lawyers, including members of the Bars of each of the fifty-one judicial districts of Pennsylvania, signed a call for a meeting in the Supreme Court Room at Harrisburg on January 16, 1895, to consider the organization of the Pennsylvania Bar Association. Nearly two hundred lawyers met at the appointed time and place and agreed to organize the association, whose charter was granted on July 1, 1895, by the Court of Common Pleas of Dauphin County. The purposes of the Association are "to advance the science of jurisprudence; to promote the administration of justice; to see that no one, on account of poverty, is denied his legal rights; to secure proper legislation; to encourage a thorough legal education; to uphold the honor and dignity of the Bar; to cultivate cordial intercourse among the lawyers of Pennsylvania, and to perpetuate the history of the profession and the memory of its members."

It is interesting to note that one of the original Board of Directors of the Association was a young Philadelphia lawyer, George Wharton Pepper, long recognized as the leading citizen of the Commonwealth and now, at ninety-one years of age, the oldest surviving ex-President of the Association, having served in that capacity in 1928-1929. The first President of the Association was John W. Simonton, of Harrisburg. Harrisburg has furnished six of the sixty-four Presidents; Philadelphia has furnished fourteen; Pittsburgh, eleven. The other thirty-three Presidents have come from all other parts of the state, representing no less than twenty-three different counties. J. Villard Frampton, of Oil City, is President this year.

Continuity of administration has been greatly helped by the fact that there have been only five Secretaries of the Association, four from Philadelphia and one from Harrisburg, and only three Treasurers, two from Cumberland County, which is just across the Susquehanna River from Harrisburg, and for the past twenty-six years the Fidelity-Philadelphia Trust Company. Mrs. Barbara Lutz, once of Philadelphia and now of Harrisburg, has served as Executive Secretary for thirty-eight years.

The Association now has 6,019 members, who in turn are members of sixty-seven county bar associations. It is a purely voluntary association, but fifty-six county bar associations have all of their members enrolled in the state Association's membership.

In January, 1946, the President of



Headquarters of the Pennsylvania Bar Association in Harrisburg

the Association appointed a Committee on Ways and Means for the Acquisition and Endowment of a Home for the Association, consisting of fifty-two members and including all of the fifteen living ex-presidents, with Robert T. McCracken as Chairman and William Clarke Mason as Vice Chairman. A vigorous campaign was undertaken, which resulted in raising nearly $100,000. After the pattern of the American Bar Association, a charter was obtained for the Pennsylvania Bar Association Endowment, a corporation not for profit and prohibited by its charter from engaging in propaganda for legislation. The original officers were John G. Buchanan, of Pittsburgh, President; Robert T. McCracken, of Philadelphia, Vice President; John McI. Smith, of Harrisburg, Secretary and Treasurer; and the Board of Directors included also Eugene D. Siegrist, of Lebanon; Edmund C. Wingerd, of Chambersburg; Fred T. Fruit, of Sharon; Owen J. Roberts, of Philadelphia; M. J. Martin, of Scranton; William I. Schaffer, of Philadelphia; and Aaron S. Swartz, Jr., of Norristown. In 1949 Mr. Buchanan resigned as President, though remaining a member of the Board of Directors, and Mr. McCracken, who ten years before as President of the Association had proposed the acquisition by it of a permanent home, became President of the Endowment. He continues ably to fill that office, to which he has devoted much of his busy time and great talent.

In the spring of 1948 the Endowment acquired the most notable historic mansion in Harrisburg as a home for the Association. It is a superb example of Early American architecture, built in 1791 by William Maclay, son-in-law of John Harris, Jr., the son of the founder of the town. Mr. Maclay was one of the first Senators from Pennsylvania in the Congress of the United States, the author of a private journal of debates in the Senate and a caustic opponent of the Federalist Party. He is regarded by many as having been, rather than Jefferson, the real founder of the Democratic Party. Interestingly enough, his great-great-grandson, William I. Schaffer, former President of the Association and Chief Justice of Pennsylvania and one of the first directors of the Endowment, was a life-long Republican.

Mrs. Barbara Lutz

The remodeled mansion was formally dedicated at a meeting of the Pennsylvania Bar Association on January 6, 1950, at which Mr. McCracken presided and presented to Colonel John McI. Smith, then President of the Association and Secretary of the Endowment, the right of use and occupancy of the mansion. The principal address of the occasion was delivered by Senator Pepper.

At the present time the offices of the Association are on the first floor of the building. On the second floor is a very handsome reception room, containing portraits of Senator Pepper, Chief Justice Schaffer and Mr. McCracken, together with a grandfather's clock and a secretarial desk, once the property of Governor Thomas Wharton, an ancestor of Senator Pepper, and presented by him to the Endowment. On the third floor there is a working library, with a number of committee rooms.

The Endowment, in furtherance of the purpose of its incorporation, has engaged in a number of enterprises involving research. Notable among these is a nationwide study, with the aid of a grant of $50,000 from the Fund for the Republic, of a subject of great current interest, Eavesdropping. The Reporter of the Endowment for this study is Samuel Dash, Esq., recently District Attorney for the County of Philadelphia.

A Workshop on Preventive Law sponsored jointly by the Philadelphia Bar Association and the Board of Education of Philadelphia for the last three years is proving to be a valuable tool in promoting better understanding of the law and good citizenship among the city's 80,000 high school students.

Each year more than 100 public school teachers and counsellors have attended the special seven-month lecture series, held on the third Tuesday of each month from November through May. The lectures are given in the Mayor's Reception Room in the City Hall and teachers and counselors taking the course receive credits for "in-service" work.

Preventive law course speakers include judges, lawyers and law teachers. Immediately following each lecture, the speakers are available for a question and answer period.

One of the advantages of the course is that it acquaints teachers with basic law relating to juveniles and to curriculum-related fields. Thus they are better able to deal with problems arising both in and out of the classroom, and to give students an understanding of their legal responsibilities.

James O. Wilson

The 1958 Annual Meeting of the Wyoming State Bar was held September 11-13, at Jackson Lake Lodge beneath the majestic and scenic Teton Mountains.

James O. Wilson, of Cheyenne, succeeded Thomas O. Miller, of Lusk, as President. Other officers elected were: Charles M. Crowell, of Casper, President-Elect; John P. Ilsley, of Gillette, Vice President; and John T. Dixon, of Powell, who was re-elected Secretary-Treasurer.

Ross L. Malone, of Roswell, New Mexico, President of the American Bar Association, addressed the meeting during the Thursday session on "Lawyers in the Sputnik Era". President Malone warned that a serious shortage of lawyers would occur in the near future as a result of the emphasis now being placed on science, and he urged

that this problem be given careful consideration throughout the nation.

Frank A. Barrett, United States Senator from Wyoming, and E. Keith Thompson, Congressman from Wyoming, were also speakers at the meeting.

The Thursday session was closed with a discussion on a now pending constitutional amendment for four Supreme Court judges. The Wyoming State Bar approved the amendment and were urged to give active support to its passage through local bar associations.

On Friday morning, John W. Cragun, of Washington, D. C., Chairman of the American Bar Association's Committee on Code of Administrative Procedure, gave an address entitled "Who Is the Judge—Agency or Court?" Mr. Cragun's talk was devoted to the problems confronting a litigant when administrative procedures must be exhausted prior to resorting to the courts of law.

A demonstration on the Keeler Polygraph (lie detector) followed by a lecture on the uses and advantages of the Polygraph as evidence in courts of law was given by E. J. O'Meara, of Casper.

Colonel Lewis F. Shull, Staff Judge Advocate, United States Army Air Defense Command, presented a film entitled "Army Research and Development", and then gave a detailed account of the United States' progress in missile warfare.

The Junior Bar Association for the State of Wyoming met during the meeting and elected Melvin M. Fillerup, of Cody, Chairman; Bruce P. Badley, of Sheridan, Vice Chairman; and Carl Lathrop, of Cheyenne, Secretary-Treasurer.

The meeting closed with a banquet for members and their wives, the speaker for the occasion being the Governor of Wyoming, Milward L. Simpson.

The members of the Ohio State Bar Association have started a campaign to raise funds to build a new Ohio Legal Center on the campus of the Ohio State University. The Center will provide a permanent and adequate home for the administrative headquarters of the organized Bar, as well as the facilities to furnish information and research service on specific legal questions to judges, legislators, lawyers and laymen. For many years the Ohio State Bar Association has been working in crowded quarters. There is an increasing need for adequate space for a larger staff; for accommodations for serving more than forty committees in their educational and public relations activities; for expanded information and research service to individuals; and for the editing of various publications.

The location at one of the great research centers will afford accessibility not only to Ohio's largest law library but also to many non-legal libraries and a wealth of other research material. A close working relationship with the College of Law will make possible the rendering of many additional services to individual lawyers and facilitate post-graduate education and legal research programs.

Space in the new classroom, auditorium and library units of the College of Law, together with the proposed service and research building will provide meeting rooms for groups up to 400. Also conveniently near will be the meal and banquet facilities of the Ohio Union. In addition, the University is planning a nearby hotel unit for persons attending post-graduate functions on the campus.

The building under plan will be a three-story brick and stone structure with approximately 24,000 square feet of floor space. It will be modern and utilitarian in design and layout, yet dignified in style and furnishings fitting to the profession which it will serve.

The main floor will include a reception hall and a members' lounge, overlooking an enclosed garden. The Association's counsel and his staff will have offices next to a small working library. A formal meeting room and two small committee rooms will also be found on this floor.

The second floor will house the general administrative offices of the Association and Foundation. Here the staff will have space to carry on the many Association activities and service the needs of committees and sections. The editorial office of the *Ohio Bar* and the bookkeeping department will also be on this floor.

The third floor will be devoted entirely to research activities to be carried on jointly by the Ohio State Bar Association Foundation and the College of Law. There will be two permanent offices and a research and survey library.

The total cost of the building and furnishings will be raised by voluntary contributions to the Ohio State Bar Association Foundation.

Thomas L. O'Leary

Eight continuing legal education institutes, an address by President Ross L. Malone, of the American Bar Association, and the announcement of the election of Thomas L. O'Leary, of Olympia, as the new President of the Washington State Bar Association highlighted the Association's annual meeting at Vancouver, B. C., on September 17-20.

A side attraction, not on the regular program, but attended with great interest by many American lawyers, was a murder trial in Assize Court presided over by Mr. Justice Manson.

The Association had not met in Canada for many years, but the large attendance and the hospitality of the Vancouver Bar indicate that the experiment was a great success.

The legal institutes involved twenty-five speakers and covered the following subjects: (1) Scientific and expert proof, with emphasis on tire dynamics, skid marks, and the lie detector; (2) the Uniform Commercial Code; (3) "The Lawyer and His Dollar", by John C. Satterfield, of Yazoo City, Mississippi, and an explanation by Canadian lawyers of their work in the fields of legal aid, lawyer referrals, and the special fund for reimbursement in case of

defalcation; (4) The law of evidence, with special attention to matters of impeachment of witnesses, opinion evidence and hearsay; (5) Criminal law, including release from custody, habeas corpus and preliminary preparation of defense; (6) Life insurance law; (7) Corporation law, rights of minority shareholders, a corporation's purchase of its own stock, and the formation of a corporation; and (8) A demonstration of a physician's post-injury orthopedic-neurological examination.

Mr. Malone and John N. Rupp, of Seattle, appeared on the radio program "Canada's Town Meeting of the Air"; and Mr. Malone, Frederick C. Palmer, the outgoing President of the Washington State Bar Association, and Mrs. Alice Ralls, its Executive Secretary, also appeared on other Canadian radio programs.

Mr. Malone and Elmore Meredith, Q. C., of Vancouver, were made honorary members of the Association. Walter Owen, Q. C., the new President of the Canadian Bar Association, was a guest at the Annual Banquet where he spoke on the subject, "The Legal Profession in the Space Age". He drew attention to the need, in these times of great emphasis on education in the sciences, of increasing the flow of able young people into the practice of law.

The Association presented its Award of Merit to Clarence J. Coleman, of Everett, for his work in the field of continuing legal education and to William J. Steinert, of Seattle, George W. McCush, of Bellingham, and Herbert Ringhoffer, of Walla Walla, for their service as bar examiners.

Included in the resolutions adopted at the meeting were: (1) one asking the Board of Governors to withdraw a resolution passed earlier by the Board in which the Board had stated its opinion that

> any use of the names of lawyers wherein lawyers are designated by their names and profession in public and advertisement in support of judicial and quasi-judicial office is a violation of the Canons of Professional Ethics and contrary to the highest legal standards.

and (2) a resolution altering the Association's "non-Communist oath" to read as follows:

> I do not advocate the overthrow of the Government of the United States by force or violence and I am not knowingly a member of any organization or party having this for its purpose.

The South Dakota State Bar Association, with the co-operation of the Business Research Bureau of the School of Business of the State University of South Dakota, has conducted and printed an Economic Survey of South Dakota Lawyers, Bulletin No. 56, July, 1958. A questionnaire was devised and distributed by a committee of the State Bar Association and the replies were sent directly to the Business Research Bureau. Replies were received from 236 lawyers engaged in the full-time practice of law and these replies constituted the bases for the survey.

A few of the highlights of the survey include:

There seems to be no relation between lawyers' ages and the populations of the communities in which they practice.

Generally speaking, the larger the city, the higher the net income of the lawyer. This correlates with the results of similar studies in Iowa and Minnesota.

Probate work becomes more important as a source of income as city size decreases. Lawyers in the larger cities are more active in damage cases, with probate work, office practice and corporation practice also important income sources.

The higher income lawyers, as well as the specialists, are practicing in firms.

The average income of South Dakota lawyers appears to be less than the national average income of all lawyers. The latest data for the United States are for 1954 when the average income of all lawyers was $10,218, compared to $8,170 in South Dakota, as shown in this survey.

The President's Page

(Continued from page 1020)

as the public and professional responsibility of lawyers should be incorporated in continuing legal education programs, along with "bread and butter" subjects;

4. The place of the law schools in continuing legal education; and

5. The correlation of the legal education received at law school and that which follows admission to the Bar, to insure maximum benefit from both.

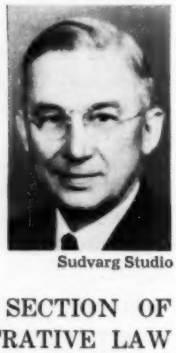
These and many other questions which have assumed importance as continuing legal education has developed will be discussed by the conferees and a consensus will be reached wherever possible. We anticipate that conclusions reached at the Conference, as well as portions of the program, will be published and made available to the profession.

The profession now recognizes the National Conference on Legal Education sponsored by the American Bar Association in 1922 as the occasion upon which the legal education which precedes admission came of age in the United States. It is not too much to hope that the Conference at Arden House will render a comparable service with reference to the education of the profession after admission to the Bar.

The details of the Conference, including the method of selection of participants, will be announced to all interested bar associations and institutions at the earliest possible time. The co-operation of the entire profession is urged to insure the maximum success of the Conference.

Activities of Sections and Committees

John B. Gage



Sudvarg Studio

SECTION OF ADMINISTRATIVE LAW

This Section has experienced a busy and successful year under the able leadership of its Chairman, Donald C. Beelar, of the Washington, D. C., Bar.

Chairman Beelar, in public statements during the year, called attention to the fact that more agency trial examiners were continuously engaged in the hearing of agency cases, many of which are of great economic importance not only to the litigants but to the public, than there are federal district judges in the United States. Furthermore, congressional investigations during the year threw an intense limelight of publicity upon defects in agency adjudicatory practices and procedures.

At the February, 1958, meeting in Atlanta the Association, at the instance of the Section, again called attention to the proposals set forth in resolutions adopted in 1956 for improvement in the procedural aspects of agency practice and the pending legislation directed toward that end. It also urged the enactment of a Statutory Code of Agency-Tribunal Standards of Conduct relating to adjudicatory proceedings binding not only on the agencies but all others who might seek *ex parte* to influence the result in agency cases. President Ross L. Malone has designated the Section of Administrative Law to draft and sponsor the adoption of a Code of Agency-Tribunal Standards of Conduct, as well as to seek the enactment of necessary supporting legislation as contemplated by the resolution adopted by the House of Delegates at Los Angeles.

A very interesting and instructive panel discussion of the same subject and of the report of a special committee of the Section was had at the Los Angeles meeting. It appeared that the work of draftsmanship was already far advanced but that great care must be used in the phraseology of such a statute. A special committee under the chairmanship of Judge David W. Peck, of New York, will finish the work. It is hoped that the result will be ready for presentation to the Council of the Section at the Midyear Meeting and later to the Board of Governors and House of Delegates of the Association.

A full report on the Los Angeles meeting of the Section, including the draft of a proposed Code of Agency-Tribunal Standards of Conduct as well as additional Committee reports, will appear in the fall issue of the *Administrative Law Bulletin*. Early in December, the Section will hold a practice session in Washington, D. C., in which agency members as well as lawyers experienced in specialized agency practice and procedures will participate. Dr. Frank C. Newman, of the Law School of the University of California, is preparing an agency by agency bibliography of source material on procedures and practice.

Officers for 1958-1959 are John B. Gage, of Kansas City, Missouri, Chairman; Earl W. Kintner, of Washington, D. C., Vice Chairman; and Elizabeth C. Smith, of Washington, D. C., Secretary. Council members are Donald C. Beelar, of Washington, D. C., Robert M. Benjamin, of New York City; Charles E. Long, Jr., of Dallas, Texas; L. Clair Nelson, of Hamilton, Ohio; William I. Denning, of Washington, D. C.; Whitney R. Harris, of Dallas, Texas; Frank C. Newman, of Berkeley, California; Rufus G. Poole, of Albuquerque, New Mexico; Frederic P. Lee, of Washington, D. C.; Harold L. Russell, of Atlanta, Georgia; Albert E. Stephan, of Seattle, Washington; and Kenneth Teasdale, of St. Louis, Missouri. John W. Cragun, of Washington, D. C., is Section Delegate to the House of Delegates.

Hubert Hickam

Miner-Baker

SECTION OF ANTITRUST LAW

Although this Section is only six years old its membership has now passed the 4,000 mark. Under Earl W. Kintner, Chairman of the Membership Committee, the membership has more than doubled during the past three years.

More than 3,700 copies of the Section's *Antitrust Handbook* have been sold. The *Handbook* is a hard cover volume in which are reprinted a series of basic symposia covering fundamental phases of our antitrust law. This series was presented at meetings of the Section during the years 1953 and 1954.

At the meeting of the officers, the Council and the Committee Chairmen in Los Angeles on August 25, a report of the special committee to review the problems and make recommendations with respect to the handling of long cases was submitted to the Council and enthusiastically approved by it. The report entitled "Streamlining the Big Case" is being published as part of the report of the Los Angeles meeting. The committee is being continued to act in an advisory capacity to aid a subcommittee of United States District Judges set up by the Judicial Conference which is engaged in preparing a handbook for lawyers and judges dealing with the problems of procedure in protracted cases.

At the Los Angeles meeting a semi-

nar was conducted on August 25 and 26 on the subject "Primary Jurisdiction". The speakers were Victor R. Hansen, Assistant Attorney General in Charge of the Antitrust Division of the Department of Justice; Homer I. Mitchell, Los Angeles; Howard J. Trienens, Chicago; Professor Carl H. Fulda, College of Law, Ohio State University; and William L. McGovern, Stephen Ailes and H. Thomas Austern, Washington, D. C.

The papers of each of the speakers will be published in full in the printed report of the August meeting.

At the annual luncheon of the Section the principal speaker was Thomas E. Sunderland, of the Chicago Bar, who, for the past six years has prepared for the Section an annual review of developments in antitrust. He gave the highlights of his "Developments Review". It will be published in full in the report of the proceedings. Another speaker at the luncheon was Judge Stanley N. Barnes, of the United States Court of Appeals for the Ninth Circuit, former Assistant Attorney General in Charge of the Antitrust Division.

The meetings of the Section were presided over by Herbert E. Bergson, the retiring Chairman.

New officers of the Section and members of the Council are Chairman, Hubert Hickam, Indianapolis; Vice Chairman, Jerrold G. Van Cise, New York City; Section Delegate to the House of Delegates, Professor S. Chesterfield Oppenheim, of the University of Michigan Law School; and members of the Council, C. Brien Dillon, Houston; Curtis C. Williams, Jr., Cleveland; and Laurence I. Wood, New York City.

SECTION OF CORPORATION, BANKING AND BUSINESS LAW

A record attendance of members of the Section of Corporation, Banking and Business Law at the annual meeting in Los Angeles taxed the capacities of the Section's programs. An overflow audience heard Laurens Williams, John J. Creedon, Harold F. Birnbaum, David A. Bridewell, R. Emmett Kerrigan, Earl Q. Kullman, Harry K. Mansfield, William T. Plumb, Jr., and Daniel S. Wentworth discuss recent federal tax lien decisions and the need

George C. Seward

Blackstone Studios

for federal legislation to protect mortgagees, sureties, materialmen, contractors, legal counsel, warehousemen and others. A transcript of the discussion appears in the November issue of *The Business Lawyer* which goes to all Section members. Copies may be purchased by non-members for $1.50. The panel analyzed also the report of the American Bar Association Committee on Federal Liens. The demand for copies of such a report have been so large that arrangements have been made for reprinting to make copies available at the American Bar Center in Chicago.

Of equal interest was the panel discussion on the organization and operation of corporate law departments which was sponsored by the Section jointly with the Los Angeles Bar Association's Committee on Corporate House Counsel. E. Nobles Lowe, Chairman of the Section's Committee on Corporate Law Departments, arranged an unusually fine panel composed of John S. Tennant, General Counsel for U. S. Steel Corporation, as Moderator, and as panel members, Leon E. Hickman, Vice President and General Counsel of Aluminum Company of America, Howard L. Hyde, Vice President and General Counsel of Goodyear Tire and Rubber Company, William F. Kenney, Vice President and General Counsel of Shell Oil Company, and Richard E. Peterson, General Counsel of Pacific Gas and Electric Company. Their candid discussion was "off the record". Hence, no transcript was made for publication.

The Section's Committee on Savings and Loan Law, under the Chairmanship of David A. Bridewell of Chicago, held three meetings, at which the problems of savings and loan institutions were considered; and the Section's Division of Food, Drug and Cosmetic Law, under the Chairmanship of Charles Wesley Dunn of New York, presented programs on food, drug and cosmetic law problems.

As many persons as could be served at the luncheon meeting of the Section on Tuesday, August 26, heard Arthur H. Dean, former Ambassador to Korea and head of the United States Delegation to the United Nations Conference on the Law of the Sea, discuss "Economic Competition of the Soviet Union and Its Satellites".

The Ballroom of the Biltmore Hotel was filled to capacity by the crowd which listened to the presentation of the "Voice of the Gavel", an original three-act play by Jack Stutman of the Los Angeles Bar, and a distinguished cast including members of the Bench and Bar of California and of the state and municipal governments, which developed in a very amusing yet highly instructive manner the central theme of insolvency, reorganization and bankruptcy with a small businessman as the "hero". The play was a great success and a number of bar associations have requested permission to produce it. The script appears in the November issue of *The Business Lawyer*.

Following the play, the Section held its business meeting, at which officers and council members were elected. This year's officers are: George C. Seward, New York City, Chairman; George D. Gibson, Richmond, Virginia, Vice Chairman; Willard P. Scott, New York City, Secretary; and Herbert F. Sturdy, Los Angeles, Section Delegate to the House of Delegates. The by-laws of the Section were amended to provide for the election of three council members annually rather than two as heretofore. The new council members are: Michael F. Markel, Washington, D. C., George R. Richter, Jr., Los Angeles, and Samuel B. Stewart, Jr., San Francisco, all of whom serve for four-year terms.

Chairman Herbert F. Sturdy announced also that Farrington B. Kinne, a member of the Illinois Bar, had been employed by the Section as Executive Secretary. He will have his office at the American Bar Center. The growth of the Section has been so great that the services of an Executive Secretary are necessary to service properly the needs of the membership.


Nachè

Rufus King

SECTION OF CRIMINAL LAW

With its programs and annual meeting in Los Angeles this summer, the Section of Criminal Law quietly celebrated its thirty-eighth anniversary as an active Section of the American Bar Association. This occasioned some reminiscing about the distinguished men who have been associated with the work of the Section during its long history, and about some of the enterprises and accomplishments for which the Section claims a modicum of credit.

Though seldom credited with earth-shaking results in its own right, the Section has a creditable record of being unobtrusively associated with many matters of importance both to the legal profession and the nation. Section discussions on problems in the administration of military justice played a large part in the genesis of the late Judge Arthur Vanderbilt's committee, and its work in drafting the new Code of Military Justice. The Section was associated from the outset with the 1941 revision of the Federal Rules of Criminal Procedure. It launched discussions of the problems to be faced in the trial of war criminals long before the realities of Nuremberg and Tokyo. It lent its efforts to the development and enactment of the California Youth Authority Act and the Federal Youth Correction Act, and gave some of the initial impetus to the American Law Institute's Model Penal Code project and to the American Bar Foundation's Survey of the Administration of Criminal Justice.

When the Senate Crime Committee began its startling disclosures about organized crime, the Section was instrumental in setting up the American Bar Association's special Commission on Organized Crime, which in turn cooperated closely with the Senate group and gave continuing support for the legislative proposals which resulted from the investigation. The Association's splendid Traffic Court Program was initiated within the framework of the Section of Criminal Law. And other areas where the Section has made its way, and sometimes left its mark, are numerous and varied: reconsideration of the McNaughton rule of mental responsibility for crime; the implications of wiretapping and electronic surveillance; the problem of disparate sentences; narcotic drug laws and enforcement policies; international criminal law as an instrument for enforcing peace; rational perspectives in assessing delinquency and crime among juveniles; law-enforcement aspects of internal security measures; proper and improper curbs on the actions of arresting and arraigning authorities; pros and cons of the public defender system . . . and many more.

Officers are, Chairman, Rufus King, of Washington, D. C.; Vice Chairman, James V. Bennett, also of Washington; Secretary, Louis B. Nichols, of Alexandria, Virginia; and Assistant Secretary, Charles L. Decker, of Washington, D. C. Council members are: Walter P. Armstrong, Jr., of Memphis, Tennessee; J. Francis Coakley, of Oakland, California; Walter L. Green, of Washington, D. C.; John R. Snively, of Rockford, Illinois; Evelle J. Younger, of Los Angeles; Laurance M. Hyde, of Jefferson City, Missouri; Bolitha J. Laws, of Washington, D. C.; Louis A. Kohn, of Chicago; and Gustave L. Schramm, of Pittsburgh. The Section Delegate to the House of Delegates is Arthur J. Freund, of St. Louis.

The Section competes a little lamely with other Sections of the Association in the role of service agency for its members. Its limited budget does not permit an elaborate program of publications and newsletter communications to those who pay our $2 dues. Rather the Section depends on a flow of information and communications in the other direction: correspondence and discussion within its several committees and among Section members determine the subject matter of each session at its general meetings; the general discussions then form the basis for appropriate recommendations to the House of Delegates; and action by the House of Delegates gives the impetus and authority for such legislative activity and special projects as are carried on from time to time by the Section on behalf of the Association.

The Section is now organizing its committee structures for 1959, and all who are willing to participate are urged to join. For most Section members, sharing a little of the profession's responsibility for safeguarding the workings of the criminal law must be its own reward. But in the experience of most the effort is not unrewarding.

Stanley C. Morris

SECTION OF INSURANCE, NEGLIGENCE AND COMPENSATION LAW

Beginning its twenty-sixth year, the Section of Insurance, Negligence and Compensation Law has as its 1958-1959 Chairman, Stanley C. Morris, of Charleston, West Virginia.

This Section, one of the oldest and largest of the American Bar Association's eighteen Sections, has endeavored through programming, special events and publications to attract to membership and active participation all lawyers in the general practice of law and lawyers whose interest concerns insurance and allied matters.

The Section took part in the Association's Regional Meeting in Portland, Maine, and will take part in those to be held in 1959 in Pittsburgh and Memphis. While final arrangements have not yet been made, it is expected that the immensely popular trial tactics and medical-legal panels will be featured along with papers by leading insurance lawyers on subjects of significance. Appearing, of course, will be lawyers of nation-wide prominence.

The Section of Insurance, Negligence and Compensation Law has three administrative committees, thirteen general committees and five special

committees. Plans for 1958-1959 contemplate further inquiry by a Committee on Committees for the purpose of streamlining or broadening the respective committee purposes and functions and, most important, to continue its investigation of opportunities to provide greater appeal to and participation by members and prospective members in Section affairs.

A particularly important and useful project of the Section this year will be the publication of an "Index of Section Proceedings", a compilation of subject matter and author of some thirteen thousand items which have appeared in the Section's *Proceedings* of previous years. In addition, various committees of the Section will continue work in bringing up to date the annotations on automobile insurance, fire insurance and workmen's compensation and employers' liability insurance. All of these publications are made available to Section members.

Homer D. Crotty

Elson-Alexandre

SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR

The Section held its annual meeting in Los Angeles on Tuesday afternoon, August 26, following a joint luncheon with the National Conference of Bar Examiners. The luncheon speaker was Dean Albert J. Harno, whose talk dealt primarily, and provocatively, with the problem of the prospective shortage of top-caliber law students by reason of the aggressive recruitment of the most able young men by some of our sister professions, particularly science and engineering.

The Section program which followed the luncheon was devoted to a panel discussion on the subject of "The Alleged Subversive Applicant", a topic of deep current interest to Section members and to the representatives of the National Conference of Bar Examiners who were also present. Panelists were Chief Justice Raymond S. Wilkins, of Massachusetts, Professor Archibald Cox, of Harvard Law School and Samuel J. Kanner, Chairman of the Florida Bar Examiners. Peter H. Holme, Jr., of Denver, served as moderator of the discussion, which ranged widely over the problems presented by the *Konigsberg* and *Schware* and related decisions concerning the rights of an applicant for admission to the Bar to refuse to answer inquiries by admitting authorities concerning his political affiliations and beliefs, and his activities with subversive organizations. It is hoped that the remarks of the panelists will be published soon in the *Bar Examiner*.

Following the program, the Section elected as its new Chairman, Homer D. Crotty, of Los Angeles, and re-elected Peter H. Holme, Jr., of Denver, and Shelden D. Elliott, of New York, as Vice Chairman and Secretary, respectively. General Charles L. Decker, of Washington, D. C., was elected to fill the vacancy on the Council caused by Mr. Crotty's election as Chairman. Dean John Ritchie and Len Young Smith, both of Chicago, were re-elected to membership on the Council.

During Council meetings in the days preceding the Section meeting, the Council reviewed reports on reinspection of approximately thirty law schools which had been completed during the last year, and projected the reinspection of an additional thirty-four law schools in the forthcoming year. These plans are in line with the policy adopted two years ago to set up a schedule of periodic reinspection of all approved law schools in the United States. During its meetings, the Council also reviewed applications for approval by three unapproved law schools and deferred action pending further studies of their qualifications.

The Council also approved the final version of a proposed Code of Recommended Standards for Bar Examiners. This Code, the substance of which has previously been approved by the House of Delegates, represents a co-operative endeavor by committees of the Section, the National Conference of Bar Examiners and the Association of American Law Schools, and the revisions approved were ones of verbiage and arrangement. In its now final form it will be presented to the House of Delegates at the Midyear Meeting for approval.

Charles B. Howard

SECTION OF MUNICIPAL LAW

Charles B. Howard, a Minneapolis attorney and former President of the Minnesota State Bar Association, was elected Chairman of the Section of Municipal Law of the American Bar Association at the Annual Meeting at Los Angeles, California, in August. He succeeded George Appel, of Philadelphia. The new First Vice Chairman of the Section is Henry B. Curtis, former City Attorney of New Orleans and present councilman of that city. The Secretary of the Section is William Tempest, of Chicago.

The Municipal Law Section is made up of attorneys for cities and villages and other lawyers who have a special interest in local or municipal law. Its purpose is to keep attorneys informed of new developments in this field. Separate committees consider the various aspects of local laws and ordinances and make annual reports, which are considered at the Section meeting. In addition, the Section publishes a monthly news letter which contains reports of recent cases and articles of general interest in the municipal field. For several years Dean Jefferson Fordham of the University of Pennsylvania has edited the news letter and he was re-elected editor for the coming year.

Membership in the Section is open to all members of the American Bar Association on payment of the annual dues of $5.00. Because of the large interest in condemnation and rezoning at the present time, the Section expects to have a considerable increase in its membership.

The new chairman has announced

as his primary objective the development of projects of interest to the attorneys of the smaller cities. At his request a new committee on Problems of Non-Metropolitan Municipalities has been created. It is hoped that this committee can focus attention on the problems of the attorneys in the smaller cities.

Robert E. Lee Hall

Harry L. Burnett, Jr.

SECTION OF MINERAL AND NATURAL RESOURCES LAW

The Section of Mineral and Natural Resources Law experienced a very successful year under the Chairmanship of Raymond B. Holbrook, of Salt Lake City. The year was climaxed by the presentation of one of the best programs in Section history at the Annual Meeting in Los Angeles. The Section's program was marked by the participation of a number of prominent lawyers active in government service, including Arch M. Cantrall, Chief Counsel of the Internal Revenue Service, as well as Under Secretary of the Interior Elmer F. Bennett and Federal Power Commissioner Frederick J. Stueck.

The subjects presented at the Annual Meeting included "Water Rights—Surface and Underground", by Burnham Enersen; "Federal Encroachment on State Water Rights", by Clarence A. Davis, former Under Secretary of the Interior; "Problems of the Coal Intervenor in Federal Power Commission Proceedings", by Jerome J. McGrath; "States' Rights and Atomic Energy", by John M. Dalton, Attorney General of Missouri; "Profit Possibilities in the Mining and Milling of Uranium", by Dr. Paul Henshaw; "Capitol Highlights on Hard Minerals", by Julian D. Conover; "Impact of Recent Legal Decisions and Administrative Actions on the Natural Gas Industry", by Paul F. Schlicher; "Well Spacing — A Reappraisal", by Robert M. Williams; and "The California Subsidence Bill", by Richard C. Bergen.

At the business meeting of the Section, Robert E. Lee Hall, General Counsel of the National Coal Association, was elected Chairman, along with the following officers: First Vice Chairman, Robert T. Patton, of Los Angeles, California; Second Vice Chairman, Clair M. Senior, of Salt Lake City, Utah; and Secretary, James D. Parriott, of Washington, D. C. The Committee Chairmen named by newly elected Section Chairman Hall are: General Advisory Committee, Charles I. Francis; Atomic Energy Committee, Francis L. Kenney, Jr.; Coal Committee, Sherman Burt; Hard Minerals Committee, Charles F. Barber; Membership Committee, William N. Bonner; Natural Gas Committee, Carl Illig; Oil Committee, John M. Madison; Program Committee, A. W. Walker, Jr.; Public Lands Committee, Elmer F. Bennett; Publications Committee, Gordon R. Carpenter; Committee on Water Rights, John Shaw Field; and Special Advisory Committee to Committee on Water Rights, Clarence A. Davis.

Elwin A. Andrus

John E. Platz

SECTION OF PATENT, TRADEMARK AND COPYRIGHT LAW

The Section had a year of great accomplishment under the leadership of its able Chairman, Frank E. Foote, of Pittsburgh. Early in the year the Section obtained approval from the Board of Governors to support the proposed new Rule of the Commissioner of Patents against advertising by patent attorneys and agents practicing before the Patent Office, and also to recommend that in making appointments to the United States Court of Customs and Patent Appeals, consideration be given to lawyers with experience and training in the fields of patent and trademark law.

The Section is indebted to Francis W. Hill of the House of Delegates and Chairman of the Association's Washington Committee, and to David F. Maxwell, a former President of the Association, for appearing at a hearing on the rule to ban advertising. The rule was finally approved by the Secretary of Commerce and becomes effective January 1, 1959.

The Section participated in the Midyear Meeting of the Association at Atlanta with papers covering all three fields of law: patents, trademarks and copyrights. The attendance of more than fifty lawyers not members of the Section is proof of the interest of lawyers in the subject.

The Section had thirty-three committees with nearly 600 active members working on them. The annual meeting of the Section opened with a meeting of the Council and Committee Chairmen on Friday evening, August 22, at the Biltmore Hotel.

Thereafter, separate symposiums on patents, trademarks and copyrights, at which interesting papers were presented, attracted an attendance of over 250 attorneys. The copyright symposium held Saturday morning, covered such subjects as "Uses of Titles for Copyrighted and Public Domain Work", and "Parody and Burlesque of Copyrighted Works as Infringement". The patent symposium was a panel discussion of the proposal for a single Court of Patent Appeals. The Section is indebted to Walter L. Pope, of the United States Court of Appeals for the Ninth Circuit, and Joseph R. Jackson, of the United States Court of Customs and Patent Appeals, now retired, for their papers on the subject. The trademark symposium was a panel discussion of proposed amendments to the present trademark law.

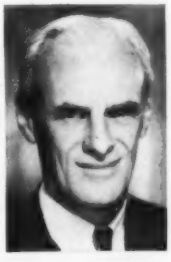
The business meeting of the Section, covering principally the reports of committees, was held for two full days commencing Monday afternoon and concluding Thursday morning. At the opening session, Arthur Crocker, First Assistant Commissioner of Patents, addressed the Section on matters of concern to the Patent Office. Approximately 235 members of the Section registered and attended the meetings. In addition, many other attorneys at-

tended the symposiums and parts of the business meetings.

The lighter part of the meeting was arranged by our host attorneys from the West Coast, headed by Robert W. Fulwider, of Los Angeles, and included a full-day trip to Catalina on Sunday, August 24, where the trademark symposium of the Section followed an outdoor luncheon given under the auspices of the United States Trademark Association. A luncheon was also attended Tuesday under the auspices of the International Patent and Trademark Association, at which Karl Lutz, of Pittsburgh, presented his colored slides of prior Section meetings.

The Annual Section Dinner was on Tuesday evening at the Biltmore and entertainment was provided by the Los Angeles Patent Law Association.

The new officers and Council held their first meeting Wednesday morning. The newly elected officers are: Section Chairman, Elwin A. Andrus, of Milwaukee, Wisconsin; Chairman-Elect, John T. Love, of Chicago, Illinois; Vice Chairman, Floyd H. Crews, of New York, New York; Council members for four-year terms: Tom O. Arnold, of Houston, Texas, and James E. Toomey, of Washington, D. C.; and Section Delegate for a two-year term: James P. Hume, of Chicago, Illinois.



J. Stanley Mullin

SECTION OF REAL PROPERTY, PROBATE AND TRUST LAW

In response to demand, the meetings of the Section at the 81st Annual Meeting of the Association dealt with practical matters. Two particularly interesting panel discussions were keyed to the complex problems presented by clients (or the client's assets) finding their way to new abodes in California or other community property states. Rights of inheritance, jurisdiction to probate and jurisdiction to tax were ably handled by experts selected because of their long experience. Unmentioned, but strongly sensed as an undercurrent, was the economic effect upon the client's lawyer when the client or his assets moved to warmer climes. In the trust field, Charles P. Curtis, noted individual trustee and author, gave a most interesting account of the life of a Boston trustee as compared to the practice of corporate trustees elsewhere.

In addition to its regular Section meetings, the Section co-sponsored with the Section of Corporation Law an excellent panel discussion on the "Relative Priority of Government Liens"—a pressing problem for private lien holders. The Section also co-sponsored with the Section of International and Comparative Law a program on the "Scientific and Legal Problems of Space Travel". (This Section's interest in this subject sprang from the age old question, "How high up in the air may a property owner claim an interest?")

The Section presented programs on Estate Planning at the Regional Meetings held in Portland, Maine, in October, and another is scheduled for Pittsburgh, Pennsylvania, in the spring of 1959.

New officers elected by this Section are:

Chairman, J. Stanley Mullin, Los Angeles, California; Vice Chairman, Daniel M. Schuyler, Chicago, Illinois; Secretary, William R. Dillon, Chicago, Illinois; Assistant Secretary, P. Philip Lacovara, New York, New York; Vice Chairmen and Directors: Real Property Law Division, Paul E. Basye, Burlingame, California; Probate Law Division, J. Pennington Straus, Philadelphia, Pennsylvania; Trust Law Division, Carl F. Schipper, Jr., Boston, Massachusetts; Members of Council: For term ending 1962, Edward B. Winn, Dallas, Texas; A. B. Wolfe, Boston, Massachusetts.

SECTION OF TAXATION

The officers, Section Delegate and Council members of the Section of Taxation elected at the annual meeting in Los Angeles have taken office for the coming year. Chairman Lee I. Park, of Washington, D. C., was re-elected to

Lee I. Park

serve another term. Also re-elected was Vice Chairman William R. Spofford, of Philadelphia. The new Secretary of the Section is Hover T. Lentz, of Denver. The new Section Delegate to the House of Delegates is David W. Richmond, of Washington, D. C., and new Council members, elected for terms expiring in 1961, were Edwin S. Cohen, of New York City; Austin H. Pack, Jr., of Los Angeles; and Andrew B. Young, of Philadelphia. Existing Council members who continue in office are Marvin K. Collie, of Houston; Scott P. Crampton, of Washington, D. C.; Charles D. Post, of Boston; Stanley S. Surrey, of Cambridge, Massachusetts; Randolph W. Thrower, of Atlanta; and Arthur B. Willis, of Los Angeles.

Over 2,300 of the Section's approximate membership of 7,250 have been appointed to serve on the various committees of the Section. Wherever possible, members have been assigned to the committees of their first choice. Each Committee Chairman is responsible for organizing and developing the work of his Committee. The Committees of the Section are organized along functional lines. The Committees are of two types—"substantive" and "adjective". The function of the substantive committees will be to develop legislative and other recommendations for improvement of the tax structure for presentation to the Section and House of Delegates at the next Annual Meeting. Tentative recommendations of the Committees will be presented to the Council of the Section by the Committee Chairmen at a mid-winter and at a spring meeting of Council and Committee Chairmen.

Members of the Section will be kept informed of developments during the year in the *Bulletin* of the Section, which will be published in October, January and April, by the Bulletin and Tax Notes Committee. The final reports

and recommendations of the Committees will be published, by the Committee on Annual Report, and distributed to the membership of the Section next summer in advance of the next annual meeting.

At a meeting in Los Angeles, the Council of the Section instructed the Chairman to take appropriate action to have all of the Section's existing recommendations for legislation incorporated in one bill to be introduced (if possible) at the beginning of the next session of Congress. The Council also authorized the Chairman to appoint a special committee to prepare such a bill and (together with the Co-ordinating Committee) to assist the Chairman in making the necessary preparations for presenting the recommendations to the Congress.

Godfrey L. Munter

Harris & Ewing

SECTION OF FAMILY LAW

At the Atlanta meeting in February, 1958, the House of Delegates approved the creation of a new Section of Family Law. This Section came into existence at the Los Angeles meeting in August. There were some 290 members, of whom seventy-five attended the organization meeting.

The By-Laws of the Section contain a provision outlining its purposes:

> The purpose of this Section shall be to promote the objects of the American Bar Association by improving the administration of justice in the field of family law, by study, conferences, publication of reports and articles with respect to both legislation and administration in all matters connected therewith.

The following officers and Council members were elected: Chairman, Godfrey L. Munter, of Washington, D. C.; Vice Chairman, Paul W. Alexander, of Toledo, Ohio; Secretary, John S. Bradway, of Durham, North Carolina; Council members: For term ending 1959, Morris Hartman, of Elizabeth, New Jersey, and David H. Jacobs, of Meriden, Connecticut; for term ending 1960, Una Rita Morris, of Washington, D. C., and Sol Morton Isaac, of Dayton, Ohio; for term ending 1961, Louis H. Burke, of Los Angeles, California, and Neva B. Talley, of Little Rock, Arkansas; for term ending 1962, Dorothy Young, of Tulsa, Oklahoma, and William M. Wherry, of New York City, New York.

Chairman Munter is Section Delegate to the House of Delegates.

The following committees were authorized: Adoption, Custody, Judges—Role in Domestic Relations, Juvenile Law and Procedure, Marriage Law, Matrimonial Action, Membership, Paternity, The Practicing Lawyer, Public Relations, and Support.

The Section is now engaged in filling the committees from its membership.

The organization meeting was addressed by the Right Reverend James A. Pike, then Bishop Coadjutor of the Episcopal Diocese of California (now Bishop), on "Religious and Ethical Perspectives in Family Law"; by Mrs. Una Rita Morris, Assistant Corporation Counsel for the District of Columbia, on "Some Legal and Practical Aspects of the Reciprocal Enforcement of Support Act"; and by Louis H. Burke, Presiding Judge of the Superior Court of Los Angeles County, on "The Conciliation Court".

The Council of the Section gave endorsement and approval to two projects: (1) a Journal of Family Law sponsored by a committee of the Association of American Law Schools; (2) a Conference and Research Center for Family Law sponsored by the Law School of Duke University.

A drive for new members of the Section is in process of development. The dues are $5.00 a year.

COMMITTEE ON TRAFFIC COURT PROGRAM

The Special Committee on Traffic Court Program was awarded Standing Committee status at the Annual Meeting in Los Angeles.

Also at Los Angeles, over 400 lawyers and laymen attended the First National Lawyer-Laymen Conference on Traffic Courts and Safety in the nation's history. Co-chairmen were Mr. Justice Tom C. Clark of the United States Supreme Court and Chairman of the Section of Judicial Administration, and Albert B. Houghton, Chairman of the Traffic Court Committee. Speakers included Robert Young, prominent TV and film star, and T. S. Petersen, President of Standard Oil of California and a member of the President's Committee for Traffic Safety.

Co-sponsors of the event were the President's Committee for Traffic Safety, the Traffic Court Program Committee, the Section of Judicial Administration, the California Traffic Safety Foundation and the Greater Los Angeles Safety Council.

The Traffic Court Program of the American Bar Association has just completed a year long survey of the traffic courts of the State of Illinois. They were commissioned to do this by the Illinois Traffic Study Commission which was appointed by Governor William G. Stratton of Illinois, with Franklin D. Sturdy as Chairman.

The 261-page report entitled "The Changing State and the Unchanging Courts", was prepared under the direction of James P. Economos, Director of the Traffic Court Program, with the assistance of Miss Lillian M. Banahan, Assistant to the Director. The report evaluates the performance of the Traffic Courts of Illinois and recommends changes to improve their effectiveness.

The Traffic Court Program co-sponsored the Third Arkansas Traffic Court Conference for judges, prosecutors, and laymen on September 25, 26 and 27, at the University of Arkansas, School of Law, Fayetteville, Arkansas. The University of Tennessee Law School in Knoxville, on September 8 to 12, was the scene of the last five-day regional traffic court conference which the program co-sponsored. Northwestern University, October 13-17, was the site of another regional conference.

Tax Notes

Prepared by Committee on Bulletin and Tax Notes, Section of Taxation, Kenneth Liles, Chairman

Liberalization of Treasury Regulations on Educational Expense Deduction

Recently the Treasury Department promulgated final regulations liberalizing its position on the deduction of educational expenses under Section 162 of the 1954 Code. This is good news to all who are interested in maintaining or improving their skills through further education.

The proposed regulation, §1.162-5, 1 CCH 1957 Stand. Fed. Tax Rep. ¶1350, P-H Fed. Tax Serv. ¶23,456-D (1954 Int. Rev. Code Vol.), had denied deduction of educational expenses if as a result of the education the taxpayer obtained a higher position, qualified for a trade or business, enhanced his reputation, advanced his salary or fulfilled other personal desires. Educational expenses were deductible only if (1) they were for a "refresher" course "to maintain the skills directly and immediately required by the taxpayer in his trade or business", or (2) were *expressly required* for the retention of the taxpayer's current employment. Moreover, even in the above two instances the deduction would have been denied if the expenditures *had resulted* in the taxpayer's qualifying for new employment, a higher position or an increase in salary.

The case law fully supported the proposed regulation. In *Knut F. Larson*, 15 T.C. 956 (1950), expenses of an engineer for night school classes were held not deductible because they were incurred for the purpose of *increasing* the taxpayer's earning capacity, not for the purpose of *maintaining* an existing position. Education expenses were held not deductible in *Richard Henry Lampkin*, 11 T.C.M. 576 (1952), because there was no showing that such educational expenses were *required* for the retention of the taxpayer's present position. On the other hand, *Coughlin* v. *Commissioner*, 203 F. 2d 307 (2d Cir. 1953), showed that lawyers might deduct the cost of attending an institute on federal taxation because it is necessary that lawyers *maintain* their knowledge of the tax law. And in *Hill* v. *Commissioner*, 181 F. 2d 906 (4th Cir. 1950), expenses incurred by a teacher to *qualify* for a *renewal* of her certificate, so that she could continue in her position as a teacher, were held deductible.

Although the proposed regulation was not challenged in the courts,[1] the Treasury voluntarily liberalized the proposed regulation when it was promulgated in final form, Reg. §1.162-5, 1958-16 I.R.B. 12.

The final regulation provides two categories in which the taxpayer can claim that his education expenses are deductible: (1) meeting express requirements of the taxpayer's employer imposed as a condition to the *continuation* of the taxpayer's salary or employment, and (2) *maintaining* or *improving* skills needed by the taxpayer in his present employment. These provisions differ from the proposed regulation in two important ways.

First, a taxpayer can now voluntarily take courses to *improve* his skills and not merely to maintain them. Thus, for example, a teacher may deduct expenses incurred in attending summer school to improve his skills in his present employment, whereas under the proposed regulation, expenses for skill-improving courses were deductible only when required for the retention of present employment. The final regulation's limitation of the improvement to skills *needed in the taxpayer's present employment* would preclude new skills which would be used in a new job, and thus would preclude preparation for advancement. However, a deduction would seem to be allowable for the improvement of skills that the taxpayer does not presently use, but which would be helpful to him in his present employment.

Second, the proposed regulation emphasized the *results* of the educational expense while the final regulation emphasizes the *primary purpose*. For example, under the proposed regulation, if *A*'s employer *required* him to attend school to retain his present employment, status or salary, and *A* incidentally qualified for a new position or higher wage, *A* could not have deducted his educational expenses. But under the final regulation, *A* could deduct the expenses because his *primary purpose* was to meet a requirement for retaining his employment and not to gain advancement. However, the educational requirement for retention of salary, status or employment must be imposed for a bona fide business reason of the employer and not primarily for the employee's benefit.

Again, if *A* voluntarily took a refresher course with the *primary purpose of maintaining the skills* needed in his business and such a course resulted in an advanced position, the proposed regulation would have denied the deduction because the course *resulted* in advancement. But under the final regulation, *A* could deduct the expense because his *primary purpose* was maintaining his skills and not advancement.

Under both the proposed and final regulations, it is clear that expenses are not deductible which are incurred to meet minimum requirements for qualification or establishment in a chosen trade, business or profession, or are *primarily* for the purpose of obtaining a promotion, gaining an increase in salary, or satisfying general educational aspirations.

As "purpose" is difficult to define, the final regulation provides certain

NOTE: Grateful acknowledgment is expressed for the research and writing assistance of Mr. Joel Tauber in the preparation of this note. Mr. Tauber is presently a third year law student at the University of Michigan.

1. About the time the final regulation was promulgated, the case of *Marlor v. Commissioner*, 251 F. 2d 615 (2d Cir. 1958), *reversing*, 27 T.C. 624 (1956), was decided, on reasoning more closely resembling the final regulation than the proposed one.

standards. "If it is customary for other established members of the taxpayer's trade or business to undertake such education", the taxpayer will be considered to have established a proper purpose. Since a fact question is involved, the regulation includes the typical requirement that the proper purpose "shall be determined on the basis of all the facts of each case". Taxpayers should, of course, substantiate their claims on their tax returns and should take care to collect and preserve the evidence to prove their proper purposes.

Both the proposed and final regulations permit the deduction of expenses for travel, meals and lodging, incurred by the taxpayer while away from home overnight in the pursuit of educational activities. The test for the deductibility of expenses for travel, meals and lodging while away from home is whether the primary purpose of the taxpayer is personal or educational. If the primary purpose is educational, then all of those expenses as well as the general educational expenses are deductible. Of course, even though the primary purpose is educational, incidental personal expenses are not deductible. If the primary purpose is personal, none of the travel expense is deductible, and the taxpayer can only deduct that portion of the expense for meals and lodging which is attributable to deductible educational pursuits. The proposed regulation was slightly different in this regard in that it provided that *none* of the expense was deductible where the primary purpose was personal.

The following example demonstrates the applicable rule of the final regulation: *B* goes to city *Z*, which is 100 miles from *B*'s home, in order to take a two-week refresher course. *B*'s primary purpose is to take the course, but on a free weekend *B* travels 10 miles to city *Y* to visit some friends. As *B*'s primary purpose is to take the course, his travel expenses to city *Z* and home are deductible, although the travel expenses to and from city *Y* are not deductible. The expenses for meals and lodging will be allocated between his educational pursuits and personal activities. If *B* had gone to city *Z* to take the course but had vacationed there several weeks after the completion of the course, his primary purpose might be considered personal, in which case none of his travel expenses would be deductible and the expenses for meals and lodging would not be deductible except for the portion clearly allocable to the period during which he attended the course.

It should be noted that general educational expenses must be itemized as a deduction from adjusted gross income under Section 63, and therefore cannot be taken if the taxpayer uses the optional standard deduction under Section 141. On the other hand, expenses for travel, meals and lodging while away from home are a deduction from gross income to arrive at adjusted gross income under Section 62, and therefore can be deducted even if the optional standard deduction is used.

The liberalization of the deduction for educational expenses in the final regulation would appear to be a fair interpretation of Section 162. Section 162 provides that "there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred . . . in carrying on any trade or business". Educational expenses are ordinary in the sense that they are of common or frequent occurrence in the type of business involved, *Deputy* v. *duPont*, 308 U.S. 488 (1940), and "necessary" in the sense of being helpful in developing and maintaining the taxpayer's business, *Welch* v. *Helvering*, 290 U.S. 111 (1933). If the taxpayer is taking courses which are related to his trade or business, the expenses are "incurred . . . in carrying on any trade or business".

Certainly, limiting the deduction for courses voluntarily taken to those which only maintain the taxpayer's skills fell far short of what the statute fairly allows. Improvement of presently needed skills is "necessary" in the sense of being helpful in developing and maintaining the taxpayer's business, and it is therefore the most natural and frequent reason for taking educational courses. An attorney does not attend a tax institute merely to refresh his memory of what he already knows; he also attends to become more skilled in his art, because that will help develop and maintain his business. It is encouraging to find that this improvement will no longer be treated as some sort of capital increment, and the expense as a capital expenditure.

It would also seem that a proper interpretation of Section 162 required the final regulation's shift of focus from the result of the educational experience to the purpose of the educational undertaking. There is nothing in the language or history of Section 162 to indicate that the deduction is to hinge on what resulted from the expenditure, except to the extent that the result might be a clue to the purpose. Just because purpose is difficult to ascertain, however, did not justify the use of the result test for determining the right to the deduction for educational expenses. In fact, in the non-educational area of Section 162 the courts have often allowed a deduction for an expense incurred for an ordinary and necessary business purpose, even though the expenditure took the form of and resulted in the acquisition of a capital asset.[2] Moreover, it is incongruous to tell the taxpayer that he can deduct the expenses of educational courses undertaken with the proper purpose and then to deny the deduction because afterwards he happens to be rewarded with an advancement as a result of that education. If the course was not required as a condition precedent to the advancement, the taxpayer has no control over the advancement, and cannot be said to have "invested" in the advancement by taking the courses. It may be that many such educational courses are undertaken with the hope that they will somehow put the taxpayer in a more advantageous position in regard to advancement, but mere hopes are not sufficient grounds to deny a deduction.

2. See *Commissioner* v. *Bagley & Sewall Co.*, 221 F. 2d 944 (2d Cir. 1955); *Helvering* v. *Community Bond & Mortgage Corp.*, 74 F. 2d 727 (2d Cir. 1935); *Commissioner* v. *The Hub, Inc.*, 68 F. 2d 349 (4th Cir. 1934); *Tulane Hardwood Lumber Co.*, 24 T.C. 1146 (1955); *General Pencil Co.*, 3 T.C.M. 603 (1944).

Practicing Lawyer's guide to the current LAW MAGAZINES

Arthur John Keeffe, Washington, D. C., Editor-in-Charge

ACCOUNTS RECEIVABLE: On Ascension Day (May 15, 1958), *Benedict* v. *Ratner*, 268 U. S. 353, arose from its Brandeis grave at the House of The Association of the Bar of the City of New York, 42 West 44th Street, New York, New York. Charles Willard, of the New York Bar, disinterred it by inviting Christopher W. Wilson, Vice President and General Counsel of the First National Bank of Chicago, and Otto Crouse, of the New York Bar, to lead a discussion of the recent decision of the United States Court of Appeals for the Second Circuit in the *New Haven Clock and Watch Company* case (March 28, 1958, 253 F. 2d 577).

In case you have not seen it, in *New Haven Clock and Watch*, Judge Harold Medina writes for a unanimous court consisting of himself, Circuit Judge Leonard Moore and District Judge Clarence Galston and upholds under *Benedict* v. *Ratner* the validity of an assignment of accounts receivable by the Clock Company, a Chapter Ten bankrupt, to First National Bank of Chicago.

In my judgment *Benedict* v. *Ratner* is probably as interesting and important a decision as ever the Supreme Court decided. Three great New York lawyers spent many weary hours instructing me how to draw an assignment of receivables that would satisfy the criteria that the great Brandeis laid down in *Benedict* v. *Ratner*. They were the late William M. Evarts, Otey McClellan and Lawrence Bennett. Over a long period Bennett has lectured to all and sundry about the importance of the case. He blames the long complicated American corporate mortgage on the Brandeis decision and points out how the English avoid such monstrosities by use of the floating charge.

Under present conditions we are likely to see many assignments of receivables and therefore Wilson's description of how First National policed its assignment is very timely and valuable. It seems the credit was a "revolving" one under which First National lent to the Clock Company "up to 75% of the face amount of the assigned receivables". Under the agreement, New Haven Clock and Watch was obligated to:

1. Transmit forthwith to the Bank all proceeds received on the assigned accounts, so indorsed that the Bank could effect collection.

2. Keep the proceeds of the assigned accounts separate from its own funds and hold them in trust for the Bank.

3. Record on all of its pertinent records and books of account a notation showing that the accounts were assigned to the Bank.

4. Allow the Bank to examine and make extracts from the records of the Clock Company.

5. In the case of returned merchandise, notify the Bank immediately, segregating and labeling the returned goods, and within ten days forward new accounts to cover the value of such returned goods.

6. Reimburse the Bank for any and all legal and other expenses incurred in and about the handling and collection of the assigned accounts and the preparation and enforcement of any agreement relating thereto.

The attack on the assignment came from Charles K. Rice, the able Cornell Assistant Attorney General in charge of the Tax Division, and Arthur B. O'Keefe, Jr., the Trustee in Bankruptcy.

Rice and his men (Lee A. Jackson, J. Henry Kutz, Marion W. Weinstein, Simon S. Cohen, and W. Paul Flynn) argued the assignment was bad under *Benedict* v. *Ratner* because "the Clock Company often substituted, without the Bank's direction, fresh accounts for old ones, which had been previously assigned, and the Clock Company's customers' ledger was not always stamped up to date as the Company was required by the terms of the agreement to do". Pointing out that First National continuously maintained a "four to three collateral to debt ratio in the form of assigned receivables and/or money in the collateral account" and hired its own agent to supervise the collections and put them on electronic punch cards, Judge Medina said this showed "sufficient 'policing' to sustain the validity of the Bank's security interest".

The Trustee in Bankruptcy argued that under 67c of the Bankruptcy Act an assignment of receivables was a non-perfected statutory lien. Medina gave O'Keefe short shrift. One, it is not a statutory lien but a contract, and two, even if it were a lien, First National had possession sufficient to satisfy 67.

Wilson's discussion of *New Haven Clock and Watch* is refreshing. It is good to read the comments of the bank's lawyer, the fellow responsible for the operation of the assignment.

As interesting and perhaps as important is the aspect of the case that Otto Crouse discusses. In the assignment of its receivables, New Haven Clock and Watch "agreed 'to reimburse the Bank for any and all legal and other expenses incurred' ". Rice for the Government opposed any claim for expenses. His argument was that the amount of First National's attorneys' fees were unknown at the time the Chapter Ten petition was filed and therefore "inchoate". Judge Medina said Rice was right if the United States had filed its tax lien as required by Section 3672 of the Internal Revenue Code of 1939 and Section 6323 of the 1954 Revenue Code. Since the record was devoid of evidence on this point, the Court remanded this phase of the case to the District Court.

Crouse's discussion is invaluable. Examining the line of cases upon which Medina and Rice relied he contends

they concern "Attachment liens, mechanics liens, distraints and garnishments", all of which "prior to judgment" are "inchoate".

Says Crouse:

> The *Clock Company* case appears, however, to be an entirely different matter. Here we have a voluntary conveyance of property as security, constituting the basis for an extension of credit, and to hold that the security afforded thereby is subject to subsequent unpaid taxes because the amount of the lien is not fixed seems somewhat startling.

Judge Medina decided *New Haven Clock and Watch* on March 28, 1958, whereas the Supreme Court of the United States on March 3, 1958, decided *U.S.A.* vs. *R. F. Ball Construction Company*, Docket No. 97. Crouse calls attention to the dissenting opinion of Mr. Justice Whittaker there in which Justices Douglas, Burton and Harlan joined.

Ball contracted to build a housing project at San Antonio, Texas. He subcontracted with one Jacobs to do the painting. Jacobs gave a performance bond of $229,029 inducing the United Pacific Insurance Company to be his surety. In its surety contract, just as in First National's assignment of receivables, United Pacific made Jacobs agree to assign to it all proceeds of its subcontract with Ball. Before any government tax liens were filed, some $13,228.55 was due and payable to Jacobs on his subcontract. The majority of the Court, by Mr. Justice Per Curiam, held that since the surety agreement between Jacobs and United was then "inchoate and unperfected" the Government's *subsequently* filed tax lien was prior.

In his valuable discussion, Crouse argues that both the First National assignment of receivables and the United Pacific surety agreement were really mortgages and in the words of Whittaker, "completely perfected on its date, in all respects choate, and valid between the parties; and inasmuch as it antedated the filing of the federal tax liens it was expressly made superior to those liens by the terms of section 3672."

George D. Gibson, Vice Chairman of our Association's Section of Corporation, Banking and Business Law, informs me that the *Business Lawyer* published by that Section will publish the complete text of the speeches of Messrs. Wilson and Crouse. With all my heart I recommend them to every bank lawyer. *The Business Lawyer* comes to every member of the section. Annual dues are $5.00. Non-members can write to the American Bar Association Headquarters for a "packet plan" subscription to all our Association publications or send $6.00 for a subscription just to the *Business Lawyer*. No wonder that publication has 9,000 subscribers when it is so alert as to reach for the Wilson-Crouse discussion.

If this were all there was to this complicated problem, it would not be so bad. It is not. With the approval of the National Bankruptcy Conference, American Bar Association, Chicago Bar Association, Illinois State Bar Association, American Bankers Association, New York State Bankers Association, Pennsylvania Bar Association, Philadelphia Clearing House Association and the Judicial Conference of the United States, the Judiciary Committee is at this writing (June, 1958) ready to report the Celler Bill, H.R. 5195 which defines a "statutory lien" as one arising *solely* by force of statute and not one dependent upon an agreement to give security. The bill amends both Sections 60c and 70c of the Bankruptcy Act. 60c concerns liens and priorities and 70c is the so-called strong-arm clause. The object is to reverse the *Quaker City Uniform Co.*, 238 F. 2d 155, and *Constance* v. *Harvey*, 215 F. 2d 571, cases. Professor Frank R. Kennedy of Iowa Law School is the principal draftsman and he had an interesting and informative discussion of the bill in the *Personal Finance Law Quarterly Report* (Vol. II, No. 2, Spring, 1957; address: 50 Church St., New York 7, N. Y.; price: $2.00 for four issues, no single issue price stated) with respect to earlier drafts of H.R. 5195. In footnotes Professor Kennedy cites the many valuable articles of Milton P. Kupfer with respect to *Quaker City Uniform* and the equally valuable articles of Professors Marsh and Seligson and Messrs. Weintraub, Levin and Beldock as to that famous Watervliet Diner of Reilly (*Constance* v. *Harvey*). Edwin L. Covey, chief of the Bankruptcy Division of the Administrative Office of the United States Courts, acts as a liaison between the Judicial Conference and the Judiciary Committees of the House and Senate. His office is in the Supreme Court of the United States Building and he can be depended upon to give up to date and invaluable information with respect to all bankruptcy legislation. In the same issue of the *Personal Finance Law Quarterly Report* in which Mr. Kennedy's article appears, Mr. Covey has a splendid article with respect to the Celler bill as to bankruptcy discharges, H.R. 106, 85th Congress. I might add that in the forties your editor once did a study on *Benedict* v. *Ratner* advocating that New York give a fellow the option of recording his assignment of receivables like a trust receipt or, as Wilson, risk compliance with *Benedict* v. *Ratner* by policing the assignment. My proposed reform was defeated because the New York Law Revision Commission was sure the Uniform Commercial Code would fix everything. Enough said. Lawyers who wish a copy of H. R. 5195 should write the House Document Room. Murray Drabkin is Chief Bankruptcy Counsel to Chairman Emanuel Celler of the House Judiciary Committee and in charge of drafting the bill for the Committee. He has had his work cut out for him, but has done a fine job of explanation of a very complicated piece of legislation.

OUR YOUNGER LAWYERS

Elizabeth Elward, Washington, D.C., Editor;
Charlotte P. Murphy, Washington, D.C., Associate Editor

New England Regional Meeting

The New England Regional Meeting was held amidst brilliant autumn foliage in Portland, Maine, on October 1-3. Planned with a view toward accommodating lawyers unable to journey to the West Coast for the Annual Meeting, many events had a "bread and butter" emphasis. Over 600 were in attendance. The organizational conference of the 1958-1959 JBC officers and directors was held in conjunction with the meeting. Walter E. Foss, of Portland, JBC chairman for the State of Maine, was in charge of arrangements for the younger lawyers. His committee presented an outstanding program which enabled the national officers and directors to meet with New England Junior Bar members and discuss the program of the Conference with them.

American Bar Association President Ross L. Malone addressed the New England Regional Meeting on Thursday morning, October 2, his topic being "Professional Responsibility of the Bar".

Junior Bar Conference Chairman Kirk M. McAlpin, of Savannah, Georgia, addressed a breakfast meeting at the Lafayette Hotel on October 3 with remarks directed toward Junior Bar Conference purposes and projects for the future, stressing the value of American Bar Association membership to the individual young lawyer. Contributing to and in attendance at the meeting were Junior Bar Conference Vice Chairman Gibson Gayle, Jr., of Houston, Texas, and Secretary William Reece Smith, Jr., of Tampa, Florida.

Following the breakfast meeting, former American Bar Association President Charles S. Rhyne addressed a conference on national legislation on the "Role of the Bar in Legislative Affairs". Former United States Senator Robert W. Upton, of Concord, New Hampshire, Chairman of the Association's Special Committee on Federal Legislation, presided at the meeting. Participants included President Ross L. Malone, Donald E. Channell, Director of the Association's Washington office, presidents of the state and local bar associations, Donald C. Beelar, of Washington, D. C., Chairman of the American Bar Association's ad hoc Committee on the Administrative Practice Act, and Junior Bar Conference officials.

Chairman Kirk M. McAlpin announced the creation of a committee on legislation, under the chairmanship of Walter F. Sheble, of Washington, D. C., to assist in implementing legislative proposals of particular concern to the younger lawyer. Membership thereon will include a representative from each state.

Plans were approved at the meeting of JBC officers and directors Friday and Saturday, October 3 and 4, for a joint sixth, seventh and eighth circuit meeting in conjunction with the Midyear Meeting in Chicago on Friday, February 20. Key men in co-ordinating this joint circuit meeting with the Midyear Meeting chairman, Kenneth J. Burns, Jr., of Chicago, are Council Members Richard H. Allen, of Memphis, Tennessee; John S. Rendleman, of Carbondale, Illinois; and C. Paul Jones, of Minneapolis, Minnesota. Members of the Board of Directors are Junior Bar Conference Chairman Kirk McAlpin; Vice Chairman Gibson Gayle, Jr.; Secretary William Reece Smith, Jr.; James J. Bierbower, of Washington, D. C.; Kenneth J. Burns, Jr., of Chicago, Illinois; James M. Ballengee, of Philadelphia, Pennsylvania; and Bryce M. Fisher, of Cedar Rapids, Iowa.

Lewis A. Dysart, of Kansas City, Missouri, Councilman for the Eighth Circuit, started the ball rolling on a program initiated October 1 for Junior Bar Conference members in attendance at the Los Angeles meeting last August to report to the local junior bar associations on the events which took place.

Top-Notch Junior Bar Organizations

One of the highlights of the recent annual meeting was the announcement of the winners of the JBC Award of Merit Competition. The judges of the

Walter E. Foss, Jr., Maine state chairman of the Junior Bar Conference, welcomes national chairman Kirk McAlpin, of Savannah, Georgia (at right) to the American Bar Association's regional meeting in Portland, October 1-3. Looking on are, from left, Charles B. Rodway, Jr., and Robert W. Smith, both of Portland, members of the JBC committee; William Reece Smith, Jr., JBC national secretary; and Gibson Gayle, Jr., national vice chairman.

competition met for two full days and carefully reviewed all applications.

The Junior Bar Section of the Illinois State Bar was awarded the State Junior Bar of the Year Award. Prentice H. Marshall, of Chicago, Illinois, was chairman of the group during the period for which the award was received.

Awards of Progress were made to the Junior Bar Section of the Michigan State Bar Association (Floyd E. Wetmore, Midland, Michigan, Chairman) and the State Junior Bar of Texas (C. Cullen Smith, Waco, Texas, President). Honorable Mention was awarded to the Junior Bar Section of the State Bar Association of Connecticut and the Junior Bar Section of the Florida Bar Association. Leaders of these groups were Walter M. Pickett, Jr., of Waterbury, Connecticut, and Roy T. Rhodes, of Tallahassee, Florida.

The Milwaukee Junior Bar Association under the leadership of Reuben W. Peterson, Jr., received the Junior Bar of the Year Award in the local category of organizations located in cities with a population of over 500,000. The Junior Bar Section of the Bar Association of St. Louis, directed by John R. Barsanti, Jr., received the Award of Progress, and the Junior Bar Section of the Washington, D. C., Bar Association received Honorable Mention.

The Memphis and Shelby County Junior Bar Conference won the Junior Bar of the Year Award in the category of organizations located in cities with a population of less than 500,000. William B. Leffler, of Memphis, Tennessee, was chairman of the group. The Fort Worth Junior Bar Association under the leadership of Bill Garrison was awarded the Award of Progress and the Waco Junior Bar, Hilton H. Howell, President, received Honorable Mention.

The winners of the competition were chosen by an impartial committee of ten judges. Richard H. Allen, of Memphis, Tennessee, chairman of the Junior Bar Conference Award of Merit Committee, supervised the program. Other judges were Arthur H. Gemmer, of Indianapolis, Indiana; Sidney G. Baucom, of Salt Lake City, Utah; William R. Cogar, of Richmond, Virginia; Lewis A. Dysart, of Kansas City, Missouri; Gould B. Hagler, of Augusta, Georgia; Donald G. Leavitt, of St. Louis, Missouri; Donald H. Marmaduke, of Portland, Oregon; Harry Pippin, of Williston, North Dakota; and Donald A. Wine, of Davenport, Iowa.

Notice by the Board of Elections

The following jurisdictions will elect a State Delegate for a three-year term beginning at the adjournment of the 1959 Annual Meeting and ending at the adjournment of the 1962 Annual Meeting:

Alabama	New Mexico
Alaska	North Carolina
California	North Dakota
Florida	Pennsylvania
Hawaii	Tennessee
Kansas	Vermont
Kentucky	Virginia
Massachusetts	Wisconsin
Missouri	

Nominating petitions for all State Delegates to be elected in 1959 must be filed with the Board of Elections not later than March 27, 1959. Petitions received too late for publication in the April issue of the JOURNAL (deadline for receipt March 2) cannot be published prior to distribution of ballots, which will take place on or about April 10, 1959.

Forms of nominating petitions may be obtained from the Headquarters of the American Bar Association, 1155 East 60th Street, Chicago 37, Illinois. Nominating petitions must be received at the Headquarters of the Association before the close of business at 5:00 P.M., March 27, 1959.

Attention is called to Section 5, Article VI of the Constitution, which provides:

> Not less than one hundred and fifty days before the opening of the annual meeting in each year, twenty-five or more members of the Association in good standing and accredited to a State from which a State Delegate is to be elected in that year, may file with the Board of Elections, constituted as hereinafter provided, a signed petition (which may be in parts), nominating a candidate for the office of State Delegate for and from such state.

Only signatures of members in good standing will be counted. A member who is in default in the payment of dues for six months is not a member in good standing. Each nominating petition must be accompanied by a typewritten list of the names and addresses of the signers in the order in which they appear on the petition.

Special notice is hereby given that no more than twenty-five names of signers to any petition will be published.

Ballots will be mailed to the members in good standing accredited to the states in which elections are to be held within thirty days after the time for filing nominating petitions expires.

BOARD OF ELECTIONS
Walter V. Schaefer, *Chairman*
Harold L. Reeve
Robert B. Troutman

House of Delegates

(Continued from page 1066)

Amendments to the By-Laws

Then the House turned again to the consideration of the amendments to the By-Laws of the Association proposed jointly by the Committee on Rules and Calendar and the Committee on Scope and Correlation of Work. Mr. Smith announced that the Committees were withdrawing a proposal to create a Standing Committee on Constitutional Law in order to have time to revise the statement of purpose of the proposed new committee.

He then offered an amendment the effect of which was to eliminate the Standing Committee on Ways and Means. Since the erection of the American Bar Center, Mr. Smith said, that Committee has done little. On Mr. Smith's motion, the House voted to abolish the Ways and Means Committee.

Mr. Smith's next proposal stirred up considerable controversy. He proposed to abolish the Standing Committee on Coordination of Bar Activities. At the request of two members of the House, Mr. Smith agreed to hold this proposal over for the Special Order of business at 11 o'clock when the rest of the proposals to amend the Constitution were scheduled to be considered.

Mr. Smith then offered five more amendments that made purely technical changes in the Association's By-Laws. These amendments were adopted without debate. (The text of these amendments was published at page 669 of the July issue of the JOURNAL.)

Cuthbert S. Baldwin, of New Orleans, Louisiana, then proposed adoption of an amendment to the By-Laws which had the effect of separating the Committee on Professional Ethics and Grievances into a Standing Committee on Professional Ethics and a Standing Committee on Professional Grievances. This proposal was adopted by the House with a change in the text as originally published which was proposed by Mr. Baldwin in moving adoption of the amendment.

Joint Conference on Professional Responsibility

John D. Randall, of Cedar Rapids, Iowa, presented the report of the Joint Conference on Professional Responsibility. Mr. Randall said that the Joint Conference had been established in 1952 by the American Bar Association and the Association of American Law Schools to promote a better understanding on the part of lawyers and laymen of the lawyer's professional responsibility and role in society. The Conference had formulated, he went on, a statement setting forth the professional responsibility of lawyers. Mr. Randall said that he was not asking for formal action on the statement now, but he was calling the members' attention to it. "The members of the Joint Conference believe that the statement should be published and widely read and understood before formal action in regard to it is requested", Mr. Randall said.

Section of Judicial Administration

The report of the Section of Judicial Administration was given by Judge Stephen Chandler, of Oklahoma City, Oklahoma, in the absence of the Section Chairman, Mr. Justice Clark.

Judge Chandler had this proposal, which reads as follows:

> RESOLVED, That the Section of Judicial Administration be and it is authorized to carry on a continuous study of the various judiciary articles in the constitutions of the respective states, with a view of preparing and submitting to local and state bar associations a draft for a model *uniform* judiciary article for the information and guidance of such associations in their efforts toward the improvement of the administration of justice.

The word *uniform* was deleted at the suggestion of Frank W. Grinnell, of Boston, Massachusetts, and in this form the resolution was adopted by the House.

A proposed amendment to the Section's By-laws giving the Council authority to act between meetings of the Section was approved.

Professional Ethics Opinion No. 294

The next item on the Calendar was the report of the Standing Committee on Professional Ethics and Grievances and, although the Committee made no oral report, one of the liveliest debates of the meeting rose over the question of the Committee's Opinion No. 294, dealing with the right of a collection agency to charge for the non-legal services performed in forwarding an item to a lawyer for collection. The question was raised by Robert T. Barton, Jr., of Richmond, Virginia, who asked what action the Board of Governors had taken with respect to the Opinion.

Secretary Calhoun replied there had been opposition to the Opinion and that out of deference to that opposition, the Board had deferred publication of the Opinion and referred it back to the Professional Ethics Committee and the Committee on Unauthorized Practice of the Law. Both Committees favored release of the Opinion, Mr. Calhoun said, and so the Board authorized its publication.

Mr. Barton moved that Opinion 294 be recommitted to the Professional Ethics Committee. Under it, "a collection agency can go in and solicit claims willy nilly", he said. "If they are not able to collect claims they turn the matter over to an attorney of their selection. If you do not abide by certain collection fees, you may not have the privilege of collecting those claims. That in itself is a very vicious change in the practice of law", Mr. Barton declared. "It permits a collection agency to select any attorney and to tell the attorney . . . how to collect the claim, fixes the fee, and he has to abide by the fee specified or he won't have the business. . . . Gentlemen, it is just a step from the approval and sanction of that device to the approval and sanction of 'captains' and 'runners' ".

Charles W. Pettengill, of Greenwich, Connecticut, a member of the Professional Ethics Committee, said that he thought that the Committee would have no objection to making a further study of the subject, but that he thought that

the House would be able to act more intelligently if it had a copy of the Opinion in front of it.

Mr. Barton thereupon read the Opinion to the members of the House. In substance the Opinion approves "The receiving by an attorney of a claim from a lay forwarder as agent of the creditor . . . where this is expressly authorized by the creditor, provided there is compliance in fact and in spirit with Canons 34, 35 and 47", subject to certain "minimal conditions"; the Opinion "recognizes" that the lay forwarder is entitled to be paid by the creditor for his services rendered, recites that no division of fees for legal services with laymen is proper and that the forwarder must not interpose himself between the attorney and the creditor, between whom there is the "direct relationship of attorney and client".

Glenn M. Coulter, of Detroit, Michigan, also a member of the Committee on Professional Ethics, said that further delay in the approval of the Opinion would be "most unfortunate". Both the Professional Ethics and Unauthorized Practice Committees had given thorough consideration to the problem, he said, and a hearing had been conducted on the matter before the Board of Governors.

Thomas J. Boodell, of Chicago, the Chairman of the Committee on Unauthorized Practice of the Law, said that his Committee felt that "to require anything more at the present time will not be sustained by the courts. . . . We also feel that issues of unauthorized practice are well taken care of in the Opinion . . . and we know that if the conditions of practice are abused as a result of this Opinion, the matter will be taken up aggressively by state committees all over the United States."

Harry Gershenson, of St. Louis, Missouri, declared that the question of the right of a collection agency to handle such claims had been adjudicated in Missouri, and the Missouri Supreme Court had ruled that no agency could intervene between attorney and client. "That is the issue which it seems to me was not considered [by the Professional Ethics Committee] and I would certainly support the man from Virginia in his views that this would be a very bad thing", Mr. Gershenson said.

Mr. Cannon, of North Carolina, declared that the Bar in his state agreed with the stand of the lawyer from Virginia.

Barnabas Sears, of Chicago, Illinois, inquired "What is meant by the language that the collection agency may collect for . . . non-legal services?"

Mr. Coulter said that there was a great deal of clerical work in handling the claims which the Committee felt entitled the agency to a fee.

Stuart B. Campbell, of Wytheville, Virginia, urged the House to recommit the Opinion. "We have not had an opportunity of studying all its implications", he argued. "And certainly the heavens won't fall if this matter is postponed."

In reply to a question from Mr. Pettengill, Chairman Shepherd said that Professional Ethics opinions are advisory only and are usually issued by the Committee with no action by either the Board or the House of Delegates. He added, however, that the House could certainly ask the Committee to study the matter further.

Mr. Barton's motion to recommit the Opinion was then put to a vote and carried.

Committee on Impact of Atomic Attack

The House then heard the report of the Committee on Impact of Atomic Attack on Legal and Administrative Processes, given by Hans A. Klagsbrunn, of Washington, D. C., the Chairman. Mr. Klagsbrunn asked for approval of the following recommendations:

1. That the Association urge the federal and state courts and legislatures to make adequate plans to assure the continuity of their functions in event of atomic attack.
2. That the Association continue to urge its state, local and other affiliated groups toward increased activity in developing plans and procedures to cope with the impact of atomic attack on legal and administrative processes.
3. That your Special Committee be continued, and that its name be shortened to "Committee on Atomic Attack".

Mr. Klagsbrunn explained that his Committee agreed heartily that steps should be taken to avoid the necessity for martial law in the event of an atomic attack on this country and that plans should be made to continue the effective civil government in the event of aggression. He said that great progress had been made toward this goal, particularly in California, and that his Committee was working with federal and state authorities on the legal aspects of the problem.

The Committee's recommendations were adopted by the House.

Committee on Judicial Selection

Henry E. Foley, of Boston, Massachusetts, Chairman of the Committee on Judicial Selection, Tenure and Compensation, reported on recent developments in the program to extend the American Bar Association plan for non-political selection of judges. The plan was adopted in the Constitution of the State of Alaska, he said, and part of the plan has been put into effect in Jefferson County, Alabama, while Kansas and Nevada are to vote on adopting it for their Supreme Courts. He deprecated the slowness of progress in getting the plan adopted, however, noting that it has been adopted in only three states in twenty-one years. That is "too long for the results which have been produced", he declared. He then moved adoption of the following:

1. The Standing Committee on Judicial Selection, Tenure and Compensation recommends to the House of Delegates that the American Bar Foundation be requested to make as one of its earliest orders of business a study and report with respect to the most effective method of implementing the American Bar Association Plan for the Selection and Tenure of Judges and of aiding and encouraging state organizations in securing adoption of the same. The hope is expressed that the American Bar Foundation endeavor to enlist in this regard the assistance of the American Judicature Society.

The House adopted the resolution without debate.

Mr. Foley then proposed the following:

2. The Standing Committee on Judicial Selection, Tenure and Compensa-

tion recommends the adoption of the following Resolutions:

RESOLVED, That the American Bar Association approve H.R. 3371, 85th Congress, or legislation to like effect.

RESOLVED, That the American Bar Association approve H.R. 3811, 85th Congress, or legislation to like effect.

He explained that H.R. 3371 would authorize former federal territorial judges to perform judicial service when they were designated and were willing to do so. H.R. 3811 would give federal district judges for Hawaii and Puerto Rico the tenure and retirement rights of all other district judges. Both resolutions were adopted without debate.

Committee on Economics of Practice

The report of the Committee on Economics of Law Practice was delivered by the Committee Chairman, John C. Satterfield, of Yazoo City, Mississippi. Mr. Satterfield said that his Committee intended to make available to all members of the Association "tools with which to work in the field of the economics of law practice". He said that the Committee planned a series of seven pamphlets on the subject, one of which has already been distributed. These pamphlets will be printed without expense to the Association, West Publishing Company having agreed to publish three, Bancroft-Whitney and the Lawyer's Co-operative Publishing Company two, and Prentice Hall one. Negotiations are now going on for publication of the seventh, Mr. Satterfield declared. On Mr. Satterfield's motion, the House approved the following:

1. That the Special Committee on Economics of Law Practice be continued for another year with a membership of seven.

Mr. Satterfield then offered the following:

2. WHEREAS, There have been proposals for the enactment of legislation to require parties suffering damages as a result of the operation of motor vehicles to submit their claims to an administrative commission of the same general character as Workmen's Compensation Commission; and

WHEREAS, Such legislation applies the principles of liability and limited compensation with regard to the negligence of the parties involved; and

WHEREAS, The laws of all the states of the union now provide for the recovery of full compensatory damages upon proof of liability in such cases;

NOW THEREFORE BE IT RESOLVED, That the American Bar Association opposes any legislation which deprives a person of the right of recovery of full compensatory damage upon proof of liability or of the right of trial by jury in any claims resulting from the operation of motor vehicles.

"There is a definite effort in New York, and also in some other states", said Mr. Satterfield, "to replace the common law right of recovery for injury to personal property in motor vehicle accidents by a compensation statute, largely on the basis of workmen's compensation, where there would be compensation given without regard to liability or negligence. It would probably be placed in the hands of an administrative tribunal and governed by a statute. It would remove completely from the field of practice the matter of protection of individuals who may have been injured in automobile accidents", Mr. Satterfield went on. "We feel that the people of the United States are entitled to the protection of a trial by jury in those areas where their persons or property may be injured by the negligence of others."

The House voted to adopt the resolution without debate.

International Unification of Private Law

Joe C. Barrett, of Jonesboro, Arkansas, reporting for the Committee on International Unification of Private Law, stated that while the Committee had made substantial progress, it faced a formidable task. "We have already obtained information, rather detailed, on the organization, financing and so forth, of some twenty-three to twenty-five organizations that are now active in promoting international uniformity in private law in some phase or another", Mr. Barrett said, but there are some 1500 such organizations altogether. The Committee could not make recommendations until it has thoroughly explored the background, Mr. Barrett said. "Short of a firm conviction that the activity in promoting uniformity in private law is a function to which we can no longer remain indifferent, the Committee now has no firm conviction as to what the recommendation should be to the House."

On his motion, the House voted to continue the Committee.

Amendments to the Constitution

The House then turned again to the consideration of amendments to the Constitution of the Association which had been carried over as a special order of business from the First Session.

The first item was the reconsideration of the proposal to eliminate "bullet voting" for Assembly Delegates by requiring that five candidates be voted for on the ballot.

Bert H. Early, of Huntington, West Virginia, the Chairman of the Junior Bar Conference, spoke against the amendment proposed by the Committee on Scope and Correlation of Work and the Committee on Rules and Calendar. "Whatever else may be said for or against this proposal, gentlemen", he declared, "the overriding and permeating factor, in our opinion, is that it is essentially undemocratic." Many of the younger members of the Association do not know many of the candidates for Assembly Delegate, Mr. Early said, and to require them to vote for five will mean that they must vote unintelligently. "Do you think it appropriate that we be disenfranchised because we do not know a sufficient number of people to vote intelligently for five men?" he asked.

A vote was then taken, and the proposed amendment was carried, 160 to 21, 160 being the two-thirds majority required to amend the Constitution.

Mr. Smith, speaking for the two Committees, presented the next amendment. The purpose of this amendment was to stiffen the qualifications for representation in the House of Delegates by local associations. Under the proposed amendments, a local bar association having 1000 or more members, 30 per cent, or not less than 2000 of whom are members of the American Bar Association, whichever is less, is

eligible to be represented in the House. There was a further provision providing for a reduction in the number of state bar association delegates in states where local bar associations were represented in the House. Mr. Smith added that there was a "grandfather" clause so that no local association would lose its representation in the House. The new amendment also contains a provision entitling state bar associations in states which have in excess of 2000 lawyers to an additional delegate for each additional 1250 lawyers above such 2000; no state association can have more than five delegates, however. In presenting this proposal to the House, Mr. Smith explained that it differed slightly in detail from the one published prior to the meeting.

The House voted to adopt the amendment by more than the required 160 votes.

It also adopted the proposed amendment dealing with representation of affiliated organizations in the House, discussed at the first session (*supra*, page 1065), and it also approved another amendment dealing with the time when constitutional amendments become effective.

The Committee's next proposal provoked considerable debate that lasted for most of the rest of the session and concerned an important question of the internal functioning of the Association. The two Committees proposed to abolish the Standing Committee on Co-ordination of Bar Activities. In presenting the proposal, Mr. Smith said that they felt that the functions of this Committee properly belonged to the Section of Bar Activities, co-operating with the Conference of Bar Presidents, the Conference of Bar Secretaries and other organizations.

Mr. Barrett, the Chairman of the Scope and Correlation Committee, recalled that this proposal was presented to the House at the Atlanta Midyear Meeting in February and was defeated by a close vote. Since then, the two Committees have reconsidered and are still of the opinion that the Coordination Committee should be abolished, he said, adding that a large part of the work of the Committee could be handled by the Section, and that the co-ordination department at the American Bar Center was in a much better position to handle many of the details than a Standing Committee of voluntary members.

The leader of the opposition to the abolition of the Committee was Harold J. Gallagher, of New York City, a former President of the Association. "We cannot have too much co-ordination in the American Bar Association", Mr. Gallagher argued. The Committee was formed in 1949, he reminded the House, during his term as President, because the Section of Bar Activities was not performing the function of co-ordination. While the Section has recently made commendable efforts, Mr. Gallagher conceded, the Committee should be continued "as a watchdog and as an effort to consolidate the activities of the Bar on a national and state level until it has been demonstrated that that has been accomplished by other means".

Walter E. Craig, of Phoenix, Arizona, argued that facilities at the American Bar Center are already overcrowded and that it was useless to argue that the Headquarters staff could be increased to handle the work of co-ordination. Maybe we need a committee on co-ordination, he suggested, "if for no other reason than to co-ordinate the activities of those agencies currently engaged in co-ordination."

The Bar Activities Section Delegate, Harry Gershenson, of St. Louis, Missouri, denied any implication that the Section was not doing its job. "The Section has demonstrated during the past several years that it is qualified and willing", he said.

Mr. Jenner, of Chicago, spoke against the proposal to abolish the Standing Committee. "Within this organization certainly there is room for a Committee that will consider co-ordinating matters between Mr. Gershenson's Section and the National Conference of Bar Presidents and other groups", he said.

William A. Sutherland, of Atlanta, Georgia, disputed the Committees' argument that part of the work of co-ordination could be taken over by the Headquarters staff. We certainly need a staff, he said, "but it would be too bad if we turned work of this kind over to the staff rather than to the active membership of the Association."

Ben R. Miller, of Baton Rouge, Louisiana, the Chairman of the Section of Bar Activities, declared that it was not a question of turning work over to the staff, but rather the motive was to turn the work over to the Section. "The work of the Committee falls so clearly within the jurisdiction of the Section that it is clearly a duplication and a diversification of efforts." Maybe there was need for the Committee when it was formed, he said, but that is no longer the case. Moreover, he pointed out, the budget appropriation for the Section was only $10 more than the appropriation for the Committee.

Osmer C. Fitts, of Brattleboro, Vermont, urged adoption of the proposed amendment. The work needs "unified co-ordination", he said, and the best place for that was the Section.

Allan H. W. Higgins, of Boston, Massachusetts, was also for the proposal. "There was no question of turning the work over to the staff", he declared, but it is obvious that to have both a Section and a Committee is a duplication. "The Standing Committee can be only a small committee, whereas this Section has eight hundred members to pledge themselves to do this co-ordination work", was his argument.

Willoughby A. Colby, of Concord, New Hampshire, also urged adoption of the amendment. The Standing Committee had not made a report to the House for several years, he recalled, until the Committee on Scope and Correlation had proposed abolishing it.

Martin J. Dinkelspiel, of San Francisco, California, called the Committee a "fifth wheel". "It's time that these activities were concentrated and that five organizations weren't running in five different directions attempting the same end", he declared.

In closing the debate, Mr. Smith said that the Co-ordination Committee did its best work in its early days, when it was a Special Committee. "It has not done a good job as a Standing Committee", he declared.

The House then took a vote, and the Standing Committee was eliminated.

(Continued on page 1109)

(Continued from page 1106)

Mr. Smith's last proposal was an amendment of Rule X-1, of the Rules of Procedure of the House of Delegates. The purport of this rule was to give the Committee on Credentials and Admissions power to secure additional information from local bar associations and affiliated organizations. The amendment was adopted without debate.

Junior Bar Conference

Mr. Early, the Chairman of the Junior Bar Conference, then made his report. He spoke of the new organization of the Junior Bar Conference, which now has a Conference Assembly, and he summarized some of the activities of the Conference during the year.

The House then recessed at 11:50 A.M.

Third Session

The Third Session was called to order by Chairman Shepherd at 2:10 on the afternoon of Tuesday, August 26.

Committee on Membership

Robert G. Storey, Jr., of Dallas, Texas, Chairman of the Membership Committee, reported that as of July 31, the Association had 94,301 members. He said that, while he was disappointed that the membership had not reached the 100,000 mark, he was still pleased with the results of the campaign for new members conducted in the spring. Two states—New Mexico and Arkansas—had exceeded their quotas, he announced. He reported that his Committee had under consideration several plans for the future, which were embodied in the following resolution which he asked the House to approve:

BE IT RESOLVED, That the Rules and Calendar Committee in conjunction with the Membership Committee be directed to study the following items concerning membership in the Association and report back to the House at its February, 1959, meeting with detailed recommendations for action:

(1) Establishment of a category of membership in the Association to be known as "Student Member", which said membership shall be limited to law students in their senior year.

(2) Abolishing the $4.00 per year dues for the first two years of membership in the Association and raising same to $8.00 per year.

(3) Giving free membership in the Association to newly admitted lawyers for the first year of their practice.

The House voted to adopt the resolution.

Non-Partisan Appointment of Judges

The House then turned its attention to a resolution that resulted in a long debate. The resolution was first presented to the Assembly at the 1957 Annual Meeting in New York, and was referred to the Committee on the Federal Judiciary. That Committee, after hearings, reported to the House of Delegates at the Midyear Meeting in Atlanta last February, recommending that the resolution be not adopted. The matter received considerable debate at that time, and the House finally deferred action until the Annual Meeting. The resolution, first proposed by Ben R. Miller, of Baton Rouge, Louisiana, was as follows:[1]

WHEREAS, A qualified and independent judiciary is indispensable to the maintenance of a coordinate branch of government under our Constitution and to the protection of the freedoms and rights of every individual; and

WHEREAS, It is the sense of the American Bar Association that judges of our courts should be chosen on a non-political basis and solely on merit, and should be as far removed as possible from the vicissitudes, contentions, hostilities and prejudices of party politics;

NOW, THEREFORE, BE IT

RESOLVED, That the American Bar Association in meeting assembled in the public interest respectfully recommends and urges that:

Judicial appointments should be completely removed from the area of political patronage and made only from those lawyers and judges, irrespective of party affiliation and political consideration, who possess the highest qualifications.

Suggestions for nominations should not originate in the office of the Attorney General or in the Department of Justice, as the United States is the chief litigant in the Federal Courts, but they should originate preferably in an independent commission established as an agency of the President, to advise with the President on appointments, and to receive from outside sources and from all segments of the organized Bar, suggestions of names of persons deemed highly qualified for appointment as judges in their respective jurisdictions.

The "nominations" of all persons to serve as members of the Federal judiciary should rest solely in the President of the United States; and the United States Senators in a spirit of unselfish public service should restrict themselves to their constitutional duty of conducting thorough investigations, and expressing their considered judgment, on the qualifications of the nominees.

Both parties have historically made nominations almost exclusively from the ranks of their own party, with the consequence that when one party stays in office an appreciable length of time and is able to make a considerable number of nominations, the judiciary becomes top-heavy with men chosen from the particular party in power. To avoid any suggestion of partisanship and to make the courts truly non-partisan or bi-partisan, it is desirable that there should be some recognition of a general principle that not more than 60 per cent of the members of any Federal Court should be from the ranks of the party whose President is to make the particular appointment.

FURTHER RESOLVED, That the American Bar Association expresses its gratitude for the confidence reposed by the President and the Senate of the United States in the Standing Committee on the Federal Judiciary of this Association in enlisting its advice and recommendations of those being considered for appointment and confirmation; and

FURTHER RESOLVED, That this Association pledges its complete cooperation and support in effectuating the purposes of the foregoing resolutions, and that copies hereof shall be sent to the President of the United States, the Vice President of the United States, the Speaker of the House of Representatives, and to each member of the Congress and to the Attorney General of the United States.

Mr. Miller, urging the adoption of the resolution, declared that it was "one of the important items of business to come before the House of Delegates". The resolution was not, he emphasized, "directed at or motivated by any decision of any federal court" or at the nomination of any particular judge.

1. The wording of this resolution was changed substantially before it was adopted by the House. See page 1112, *infra*, for the final version.

"We recognize that the overwhelming majority of federal judges are men of integrity, that they are diligently seeking to perform their duties conscientiously and to the best of their ability", Mr. Miller said, but "this resolution is intended to point out that their great reservoir of public trust must be maintained"; it was the purpose of the resolution to help achieve this. Mr. Miller declared that "going back at least a hundred years . . . the practice has been to make appointments [to the federal Bench] predominantly from the party in power. . . . It has been true under the Democratic Administration; it has been true under the Republican Administration; it is true at this very moment." He urged the House not to postpone action again. "This is the time, I submit", he said, "that this House, a body which has been known as a great deliberative body, a body that has been known to possess courage and to show courage, at this time should show the courage of what I know are bound to be your personal convictions. The soundness of these principles is self-evident", Mr. Miller concluded.

Loyd Wright, of Los Angeles, one of the co-sponsors of the resolution, said that there was nothing new in it, and that he had urged that something be done about the matters covered in the resolution as early as 1940. "That was after the Court-packing incident", he reminded the House, "and we stuck out our chests and beat them, claiming a victory. We lost, and we should have lost. We did not deal with the fundamentals. We were dealing with effect and not with cause."

Henry E. Foley, of Boston, Massachusetts, Chairman of the Committee on Judicial Selection, Tenure and Compensation, said that the House was already on record as favoring nonpolitical selection of judges. The objection to the resolution, he declared, was in the other clauses, particularly one referring to the Attorney General. "If I were President, or if you were President", said Mr. Foley, "I am sure you would consult your chief law officer. It seems to me ridiculous that we should attempt to say that nominations should not arise from the man that is closest to the law. I don't believe any Attorney General just appoints people who are going always to vote for the Government cause." He was opposed to the resolution, he said, because the Committee on Federal Judiciary was receiving "splendid cooperation" from the Attorney General and the Senate Judiciary Committee on the consideration of nominees for federal judgships. "Now to go out of our way, at this point, when there is no immediate need for it, to take a position that the chief law officer of the President, his attorney, cannot tell him who he thinks ought to be on the various courts, seems to me to be unreasonable and seems to me to be deliberately antagonistic."

Mr. Sears, of Illinois, was in favor of the resolution. "This resolution merely establishes the traditional principles of government", he said. "Certainly, if someone had stood in the Convention in Philadelphia back in 1787 and suggested that judges be picked on a political basis, he would have been convicted of heresy."

Mr. Willy, of South Dakota, a member of the Committee on Federal Judiciary, said that his Committee had given careful consideration to the resolution and were opposed to it. He cited the good relations between the Justice Department and the Committee. The Department sends names of persons that are being considered for appointment to the Bench by the President to the Committee for its recommendations, and in many cases, said Mr. Willy, the Committee has been given a choice of names and a list of names to investigate. "It is true we have not yet reached the stage where we have the opportunity to name the man best qualified, or the men best qualified in the states from which the appointments are to be made. There is still politics that enters into it." He urged defeat of the resolution because it might interfere with the good relations between the Department and the Committee. "We have a responsibility to maintain a friendly relationship with the Attorney General's Office, with the Senate Judiciary Committee and with the President", Mr. Willy continued. He admitted that it would be better to have judges appointed strictly on the basis of qualification, but pointed out that historically this had not been done. "Why should we antagonize that source with which we are now working on such friendly terms by impugning the motives, as this resolution has a tendency to do?" he asked. The Federal Judiciary Committee believed that passage of the resolution, Mr. Willy assured the House, "will be seriously interfering with the very splendid relationship which we now have with the sources that are responsible for the selection of our federal judiciary."

Franklin Riter, of Salt Lake City, Utah, countered Mr. Willy by saying that the relationship was "ephemeral". "If that relationship could be assured permanent function, I don't think this resolution would gather very many votes this afternoon", General Riter said, but the picture can change so suddenly that all that the Committee has accomplished will be wiped out. "We are not criticizing this Administration", he went on. "We are not criticizing the Attorney General. We are simply looking realistically at the political picture in the United States."

Frank E. Holman, of Seattle, Washington, speaking in favor of the resolution, said that in thirty-eight years as a member of the Association he had heard a lot of lip service paid to the principle of an independent judiciary. He recalled that the Attorney General himself, the evening before, had emphasized that the difference between the United States and Russia was that we have an independent judiciary. "In the early days of the Republic, it was probably all right for the Attorney General to do the selecting in the first instance. But now . . . the Government of the United States is one of the greatest litigants in the federal courts", Mr. Holman said. "When is this House, when is the American Bar Association going on record in behalf of an independent judiciary, which you just do not have and cannot have if the attorney who is to try perhaps most of the cases in the court, the Attorney General of the United States, is going to do the selecting?"

Cloyd LaPorte, of New York City, another member of the Federal Judiciary Committee, agreed that the method of selecting judges must be

improved. However, he went on, "I feel very strongly that this is not the time to propose an entirely new approach, because the improvement of the work of our Committee and our relations with the Department of Justice and with the President is going right along, it is going up . . . we should continue to progress for some time longer before we propose a new method such as a Commission. . ."

Alfred J. Schweppe, of Seattle, Washington, declared that he was in favor of the resolution. "For a good many years and I am going to be blunt about it", he said, "I have objected to the extent of control that the Office of the Attorney General wields over the federal courts. In 1939, the Court Administrator Act was passed, and we were told that we now had the Declaration of Independence for the federal courts. The federal courts were completely subservient to the Office of the Attorney General. . . . But we are not yet free from the domination of the Office of the Attorney General. We still find time after time that men who are in the Office of the Attorney General are recommended for positions on the federal courts. That is a principle to which I object." He mentioned a recent case in Washington where the Bar objected to the appointee because he was not considered technically qualified for the specialized court to which he was to be appointed. "The particular appointee was from the Executive Office of the President himself", Mr. Schweppe said. "What happened? He was appointed. Why? Because of the political situation that developed in Washington."

Mr. Jenner, of Illinois, said that he was not opposed to the principles embodied in the resolution, but he felt that its language was inept in some places to achieve the purpose. "We should eschew, says the resolution, politics", Mr. Jenner quoted, "yet the resolution, in one of the resolving clauses fixes a percentage of Democrats and a percentage of Republicans to go upon the federal judiciary. The resolution proposes a commission. . . . What kind of a commission would this be? Would it be a privy council to which none of us could make any approach, appointed by the political power in office at the time to advise the President? It might be." Mr. Jenner added that he thought the language of the resolution did cast some reflection on the Attorney General. He moved that a special committee be appointed to "study the present methods and practices of judicial selection in the federal system with a view in mind of obtaining an independent federal judiciary along the fundamentals of Mr. Miller's resolution", the special committee to report at the Midyear Meeting.

Guy Richards Crump, of Los Angeles, moved that the words "should not originate in the Office of the Attorney General or in the Department of Justice as the United States is the chief litigant in the Federal Courts, but they" and the word "preferably" be stricken from the paragraph beginning "Suggestions for nomination . . ." He also moved that the last sentence of the paragraph beginning "Both parties have historically . . ." be changed to read: "To avoid any suggestion of partisanship and to make the courts truly non-partisan, it is desirable that there should be some recognition of a general principle that a substantial percentage of the members of any federal court should be from the ranks of the party other than that of the President who is to make the appointment."

Both of these amendments were accepted by Mr. Miller.

Orison S. Marden, of New York City, said that he was for Mr. Jenner's motion. "I agree wholeheartedly in principle with the objective of this resolution", he said, "and I think that the objections to it are objections, much as I respect the men who have made them, of timidity and expediency. I am persuaded that we are, in adopting this resolution, even as amended, half doing a job that is committed to us, and I think that when we do set out the principles on which this resolution is based, we will do a complete job with the thorough study and machinery needed to carry out our objectives."

Mr. Wright replied that "We have studied and studied and studied." It was time to take a position: "All we are doing, we are committing ourselves to what every mother's son of you feels in your heart", he declared.

Mr. Miller then moved an amendment to his resolution, adding a clause calling for appointment of a committee "to implement and to attain the objectives of this resolution".

Harold J. Gallagher, of New York City, spoke in favor of the resolution. "There is nothing in this resolution which is intended to reflect upon the Attorney General or the Administration", he said. "We should seek to use the influence of this Association to see that the judiciary is not a football for rewarding those who have performed political service. . . . The question is whether we cannot get the most qualified judges instead of . . . just qualified judges."

Summing up for his substitute resolution, Mr. Jenner declared that a resolution couldn't be drafted in a town meeting. Appoint a committee, he urged, and "they will report back a sensible plan, not only along the principles of this resolution but also . . . a plan to put it into effect".

The Chair then put Mr. Jenner's substitute to a vote and it was defeated.

Robert W. Upton, of Concord, New Hampshire, moved that the paragraph beginning "Suggestions for nominations . . ." of the original resolution be amended "to recognize the relation of the Attorney General to the President in the administration of the Department of Justice". He proposed to add the words "to advise with" and "the Attorney General and the" before the word "President".

Mr. Miller objected that, under the Constitution, judges are to be nominated by the President, and the Attorney General is not mentioned.

The question was put to a vote, and Senator Upton's amendment was defeated.

At this point, there was some confusion as to the exact language of the various amendments that had been made to the resolution, and John H. Yauch, Jr., of Newark, New Jersey, moved to defer the whole resolution to the fourth session of the House, but this motion was lost when put to a vote.

William H. Avery, Jr., of Chicago, then suggested that the entire last paragraph of the resolution be deleted. ". . . the first paragraph, it seems to me,

covers that subject matter in the broad terms that are important at this time", he said. The details could be worked out later by the Special Committee.

Mr. Miller refused to accept this suggestion, and Mr. Sutherland suggested that the first sentence of that paragraph be made into a "whereas" clause. Mr. Miller did accept this, and a vote was then taken and the resolution was adopted.

In its final form, the resolution reads as follows:

WHEREAS, A qualified and independent judiciary is indispensable to the maintenance of a coordinate branch of government under our Constitution and to the protection of the freedoms and rights of every individual; and

WHEREAS, It is the sense of the American Bar Association that judges of our courts should be chosen on a non-political basis and solely on merit, and should be as far removed as possible from the vicissitudes, contentions, hostilities and prejudices of party politics; and

WHEREAS, Both parties have historically made nominations almost exclusively from the ranks of their own party, with the consequence that when one party stays in office an appreciable length of time and is able to make a considerable number of nominations, the judiciary becomes top-heavy with men chosen from the particular party in power:

NOW, THEREFORE, BE IT

RESOLVED, That the American Bar Association in meeting assembled in the public interest respectfully recommends and urges that:

Judicial appointments should be completely removed from the area of political patronage and made only from those lawyers and judges, irrespective of party affiliation and political consideration, who possess the highest qualifications.

Suggestions for nominations should originate in an independent commission established as an agency of the President, to advise with the President on appointments, and to receive from outside sources and from all segments of the organized Bar, suggestions of names of persons deemed highly qualified for appointment as judges in their respective jurisdictions.

The "nominations" of all persons to serve as members of the federal judiciary should rest solely in the President of the United States; and the United States Senators in a spirit of unselfish public service should restrict themselves to their constitutional duty of conducting thorough investigations, and expressing their considered judgment, on the qualifications of the nominees.

To avoid any suggestion of partisanship and to make the courts truly non-partisan or bi-partisan, it is desirable that there should be some recognition of a general principle that a substantial percentage of the members of any federal court should be from the ranks of a party other than that of the president who is to make the appointment.

FURTHER RESOLVED, That the American Bar Association expresses its gratitude for the confidence reposed by the President and the Senate of the United States in the Standing Committee on the Federal Judiciary of this Association in enlisting its advice and recommendations of those being considered for appointment and confirmation; and

FURTHER RESOLVED, That this Association pledges its complete co-operation and support in effectuating the purposes of the foregoing resolutions, and that copies hereof shall be sent to the President of the United States, the Vice President of the United States, the Speaker of the House of Representatives, and to each member of the Congress and to the Attorney General of the United States.

FURTHER RESOLVED, That a committee be appointed by the President to implement and to attain the objectives of this resolution.

Section of Labor Relations Law

Theodore R. Iserman, of New York City, reporting for the Section of Labor Relations Law, proposed the following:

RESOLVED, That the Walsh-Healey Act be amended to provide for initiation of judicial review of minimum wage determinations by the Secretary of Labor in the United States Courts of Appeals instead of the United States District Courts.

The House voted to adopt the resolution.

Mr. Iserman's second resolution was this:

RESOLVED, That the American Bar Association recommends the following changes in National Labor Relations Board practices and procedures:

1. The Board should be more liberal in granting requests for oral argument in representation cases. Requests for oral argument in complaint cases should be granted as a matter of course unless it clearly appears that oral argument will serve no useful purpose.

2. Attorneys, to the extent that they are available, should be assigned as hearing officers in representation cases.

3. Rules of general application contained in field procedure manuals, and interpretations of such rules should be made available in written form to the public and the Bar.

4. Dismissals of petitions and charges should set forth the specific reasons for the dismissals in conformity with the Administrative Procedure Act and the Board's rules.

5. Uniform procedures should be encouraged in the Regional Offices with respect to requirements for furnishing data supporting charges of unfair labor practices.

6. The Board should reconsider its view that its decisional policies on such matters as jurisdictional standards and contract bar rules do not come within the rule-making requirements of the Administrative Procedure Act.

7. The Board's rules should be revised to provide for the filing of cross-exceptions, after the filing of exceptions, to the report of a trial examiner.

The House voted to adopt the resolution with one minor change in wording suggested from the floor—the addition of the words "in representation cases" in the paragraph numbered "Two".

Committee on Retirement Benefits

F. Joseph Donohue, of Washington, D. C., the Chairman of the Committee on Retirement Benefits, reported the latest developments in the Association-backed Jenkins-Keogh Bills, which would permit self-employed persons to defer income taxes on a portion of their incomes set aside for retirement. Mr. Donohue reported that the House of Representatives had approved the Bills on July 29, but that the Senate had adjourned without action. However, Mr. Donohue declared, "the measure has been approved by the Ways and Means Committee of the House, it has been approved by the House as a body, we are very hopeful that in the 86th Congress we may succeed. . ."

The House voted to continue the Special Committee.

Continuing Legal Education

Secretary Calhoun then read the fol-

lowing resolution recommended by the Board of Governors:

> RESOLVED, That the supplemental memorandum of understanding between the American Law Institute and the American Bar Association in preparation for an expanded national program of continuing education of the Bar is hereby approved by the House of Delegates. BE IT FURTHER
>
> RESOLVED, That there is hereby created a Special Committee on Continuing Legal Education to be composed of six members, and a Chairman to be appointed by the President. The Committee shall act for the American Bar Association in co-operation with the Sections and Committees of the Association in promoting post-admission legal education throughout the United States.
>
> By virtue of their appointment, the members of the Committee on Continuing Legal Education shall constitute the American Bar Association members of the Joint American Law Institute-American Bar Association Committee.

Ross L. Malone, of Roswell, New Mexico, recalled that the present Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association was set up in 1948. At that time, Mr. Malone said, "this Association, partially because of financial problems and some other considerations, passed the ball primarily to the American Law Institute, which agreed to and did undertake leadership in that field". It was now felt that a greatly accelerated program of continuing legal education should be undertaken, Mr. Malone continued, and this proposal was intended to do that.

Harrison Tweed, of New York City, the Chairman of the Joint Committee, said that the proposal was a plan of reorganization whereby the Association would participate more intensively in promoting continuing legal education. He added that the proposal had the "enthusiastic" approval of the American Law Institute and of the Joint Committee. "I know of nothing that is more worthy of work by all of us than this job of getting the Bar really interested and excited about making themselves better lawyers", Mr. Tweed concluded.

The House then voted to adopt the resolution.

The House recessed at 4:35 P.M.

Fourth Session

The Fourth Session convened at 9:30 on the morning of Thursday, August 28, with Chairman Shepherd presiding.

Uniform Rules of Evidence

The report of the Special Committee on Uniform Evidence Rules for Federal Courts was given by David G. Bress, of Washington, D. C., a member of the Committee. Mr. Bress offered the following recommendation:

> (1) That the Supreme Court of the United States be urged to promulgate uniform rules of evidence applicable to actions tried in the United States District Courts;
>
> (2) That to facilitate action by the Supreme Court, the Judicial Conference of the United States be urged to appoint a special drafting committee to adapt the Uniform Rules of Evidence prepared by Commissioners on Uniform State Laws for use in the United States District Courts;
>
> (3) That the foregoing action be taken (a) as a means of clarifying and improving the evidence rules of this country, and (b) as a means of providing uniformity and conformity in evidence rules through the exercise of effective leadership on the part of the Supreme Court;
>
> (4) That the special committee on Uniform Rules of Evidence for the Federal Courts be continued.

Mr. Bress explained that the Committee had considered three questions: Whether the Supreme Court had the power to promulgate Uniform Evidence Rules; if so, whether such rules would be desirable; and finally if such rules were desirable, what they should be. Mr. Bress said that his Committee had conducted a poll of federal judges on these questions, and a large majority answered "yes" to the first two questions. On the question as to whether the judges would approve the Rules of Evidence drafted by the National Conference of Commissioners on Uniform State Laws if uniform rules of evidence were to be adopted in the federal courts, Mr. Bress said that thirty-five had replied "yes", six "no" while twenty-one had no comment or were not sure. The Committee itself was not espousing any particular set of rules, Mr. Bress said, adding that "piecemeal improvement in various states is some progress but that is not enough. We believe that unless the Supreme Court acts to promulgate a single set of rules for all federal courts, we shall miss the opportunity for achieving a real progressive step in improving the administration of justice in our courts . . . to wait for the states to start adopting uniformity as between themselves is to abandon the idea of uniformity and to forgo the possible arrival at that utopia of a uniform set of rules of procedures and evidence throughout the country, which we may still see in our lifetime".

The House voted to adopt the resolution with an amendment—the addition of the words "be urged to" in the first and second paragraphs. These were added at the suggestion of Richard Bentley, of Chicago, and were accepted by the Committee.

Assembly Delegates

Secretary Calhoun then announced the results of the balloting for Assembly Delegates. The five successful candidates were Paul Carrington, of Dallas, Texas; William C. Farrer, of Los Angeles; Walter P. Armstrong, Jr., of Memphis, Tennessee; Churchill Rodgers, of New York City; and C. Baxter Jones, Jr., of Atlanta, Georgia.

Jurisprudence and Law Reform

John C. Satterfield, of Yazoo City, Mississippi, speaking for the Committee on Jurisprudence and Law Reform of which he is a member, offered the following which was adopted by the House without debate:

> That the resolution providing that appropriate means be established to assure the participation of a nine-member court in cases to be decided by the Supreme Court of the United States, which was submitted to the Assembly at the 1957 Annual Meeting by Paul Carrington of Texas, referred by the Assembly to the Standing Committee on Federal Judiciary, and, after approval in principle by the House of Delegates at the 1958 Midyear Meeting, was referred by the House to the Com-

mittee on Jurisprudence and Law Reform for consideration and report to the House on appropriate means for effectuating the resolution's objectives, be continued in the Standing Committee on Jurisprudence and Law Reform for further study.

Mr. Satterfield also reported on the status in Congress of a number of bills which had received Committee support before the Senate and House of Representatives.

Mr. Shepherd then presented Dr. E. Vincent Askey, Speaker of the House of Delegates of the American Medical Association, who spoke briefly.

American Law Student Association

Francis J. Larkin, of Washington, D. C., the President of the American Law Student Association, then reported to the House on the activities of his organization. He said that the Law Student Association now has over 95 per cent of the nation's approved law schools in its ranks and he spoke of the *Student Lawyer Journal*, now distributed on a personal basis to the 35,000 law students in the country. He called attention to the placement survey conducted by the association, and to plans to publish sample bar examination questions. Mr. Larkin said that the prime purpose of his organization was the "long-range development of interest in student bar activities and the organized Bar itself".

Legal Services and Procedure

John W. Cragun, of Washington, D. C., the Chairman of the Committee on Legal Services and Procedure, made a progress report for that Committee. On his motion the House voted to continue the Committee.

Committee on Unauthorized Practice

The report of the Committee on Unauthorized Practice of the Law was given by the Chairman of the Committee, Thomas J. Boodell, of Chicago. Mr. Boodell discussed briefly the Connecticut bank case and the Brotherhood of Railroad Trainmen case in Illinois, in both of which the Committee had filed a brief as *amicus curiae*, and in both of which injunctions had issued forbidding the unauthorized practice. The cases illustrate the importance of co-operation among bar associations, Mr. Boodell said. He also spoke of the growing number of laymen offering "estate planning" services, saying that the Committee was firmly of the opinion that estate planning necessarily involves legal services. Mr. Boodell also called attention to a recently enacted New York statute that empowers the state's Attorney General to investigate cases of the unauthorized practice of the law, preliminary to prosecution. "We are informed that the Attorney General intends to include this activity as one of the regular functions of his office, acting in close liaison with the bar association", Mr. Boodell said. He called attention to the *Unauthorized Practice of Law Bibliography*, prepared by the Committee and the staff of the American Bar Foundation; the bibliography is designed primarily for the use of state and local bar associations and will be furnished to them by the Foundation at cost. "The temptation of laymen who seek to practice law will undoubtedly increase and not decrease", Mr. Boodell said in closing. "The legal profession cannot hope to accomplish anything by fighting all these groups all the time. Negotiation and agreement, where possible, are far preferable to litigation, hence the conferences heretofore found so useful in solving some of these problems should continue to be utilized." Not that statements of principles are Munich pacts, Mr. Boodell declared. "There will . . . inevitably be instances in which litigation must be instituted, conducted vigorously and carried through to as successful a conclusion as possible. The organized Bar would be foolish in the extreme to rely solely upon negotiation."

James R. Morford, of Wilmington, Delaware, praised the work of the Committee, calling it one of the "grass roots committees who are working indefatigably all the time, 365 days a year, in the public interest as well as in the interest of the profession. . . ." He urged all the members of the House to take home "some idea and conception of the work of the Unauthorized Practice Committee, because . . . the work of unauthorized practice must be done in the states. It cannot be done on the national level."

General Riter, of Utah, also rose to comment on the report. He urged the members of the House to study the New York statute mentioned by Mr. Boodell. "One of the weak positions of all of our associations in the matter of unlawful practice of law has been the fact that the impulse and the driving power have come from afar", he said. "As a consequence, the impact upon public opinion has failed because it has been felt that our action possesses a selfish motive. . ."

E. Dixie Beggs, of Pensacola, Florida, rose to invite all the members to attend the 1959 Annual Meeting which will be held in the Greater Miami Beach area next August 24 to 28.

"Yesterday morning, more than a hundred Floridans in attendance here at this California meeting gathered for a breakfast to discuss plans that had already been under way for some time", Mr. Beggs declared. "At that gathering, Judge Don Carroll, of the Florida Court of Appeals, gave us the interpretation of a popular abbreviation for the State of California—'CALIF.: Come And Live In Florida'." This brought forth a round of laughter, and Mr. Beggs added: "This completes eight years of service in the House for me, and this is my maiden speech to this august body. Not until now has there been such a challenging subject, moving me from my seat!"

Chairman Shepherd replied, "It seems to me that in the matter of proclaiming the glories and virtues of the several states, Texas and California have lost a little ground here this morning."

The reports of the Committee on Admiralty and Maritime Law, the Committee on Communications and the Committee on Co-ordination of Bar Activities were received and filed.

Committee on Customs Law

J. Bradley Colburn, of New York City, the Chairman of the Committee on Customs Law, made a progress re-

port for that Committee. He mentioned two things: First, the passage of an amendment to the Anti-Dumping Act of 1921, supported by the Association, which deals with the tariff on imported merchandise when the price at which the merchandise is sold for export to the United States is less than the price at which it is sold in the country of manufacture. The amendment, Mr. Colburn said, provides for the first time for adequate public notice to all interested parties of investigations and hearings made under the provisions of the statute. The second statute mentioned by Mr. Colburn was the renewed reciprocal tariff act, which contains a "novel" section, under which Congress reserved power by two-thirds vote to override the determination by the President not to make modifications in reduced tariffs. ". . . the committees of the Congress, in suggesting [this provision], comment that it seems to be of somewhat doubtful constitutional validity", Mr. Colburn said. "In other words, committees of Congress seemingly may be said to invite legal attack on the laws." The Committee intends to keep the matter under study, he reported.

Committee on Law Lists

David J. A. Hayes, of Chicago, the Chairman of the Committee on Law Lists, delivered an oral report for his Committee. He said that there were about three hundred law lists in the United States when the Committee was established in 1935; today there are about sixty-five. This is because many of the three hundred were not published in a manner that served the best interests of the profession and the public, Mr. Hayes declared. He attributed the decrease in the number of lists to the Committee's work of issuing certificates to law lists that meet specified requirements. The program can function only with the co-operation of the individual members of the profession, Mr. Hayes said. When a lawyer permits his name to be listed in a law list not published in accordance with the standards, "he fails himself, his profession and the public", he continued. "Before putting your name in a law list publication, this Committee earnestly urges you members of this Association to look for the photostatic copy of the certificate of compliance in the law list, or to write the Committee about the publication."

Section of Administrative Law

The report of the Section of Administrative Law was made by the Section Chairman, Donald C. Beelar, of Washington, D. C. Mr. Beelar offered the following resolution:

> RESOLVED, That the President of the Association is hereby authorized and directed to designate a Special Committee of the Association, or, at his election, to authorize the Section of Administrative Law to draft a code of agency-tribunal standards of conduct and to draft necessary supporting legislation and to report back to the House or the Board for approval of the code; to advise and consult with the Congress of the United States, the Executive and independent agencies of Government in furtherance of the objective of eliminating ex parte influences or pressures from the trial and decision of agency cases.

The House voted to adopt the resolution in the above form, containing an amendment suggested by the Board of Governors and accepted by the Section.

The Section's second resolution was referred back to the Section for further study on the recommendation of the Board. It dealt with the problems of persons other than attorneys of record appearing before adjudicatory hearings of federal agencies.

The third, fourth and fifth recommendations of the Section would have supported enactment of Section 1 of S. 1423, limiting Presidential review of decisions of the Civil Aeronautics Board. On the suggestion of the Board of Governors, these resolutions were referred back to the Section and to the Committee on Aeronautical Law for further study and report.

The report of the Section of Criminal Law was received and filed.

Section of Corporation Law

Churchill Rodgers, of New York City, speaking for the Section of Corporation, Banking and Business Law, said that the report of that Section was contained in the July issue of *The Business Lawyer* and called for no action by the House.

The report was received and filed.

The report of the Section of Bar Activities was received and filed.

Secretary Calhoun then pointed out that the Corporation Section had certain proposed amendments to its By-Laws that required approval by the House.

A photographer was taking Mr. Rodgers' picture at the time, and Mr. Calhoun had difficulty in getting the attention of the Delegate, and finally made the motion himself on behalf of Mr. Rodgers that the By-Laws amendments be approved. "By the way", Mr. Calhoun said, "nobody has taken my picture yet!" There was laughter as the photographer rushed over to take Mr. Calhoun's picture.

The House voted to approve the amendments to the Section's By-Laws.

The report of the Section of Insurance, Negligence and Compensation Law was received and filed.

Committee on Peace and Law

Alfred J. Schweppe, of Seattle, Washington, the Chairman of the Committee on Peace and Law Through United Nations, delivered an oral report in which he said that the Committee was undertaking a review of *World Peace Through World Law* by Grenville Clark and Louis B. Sohn. He promised that the Committee's report would be made from a "realistic point of view". "World peace through world law is a concept that recognizes the maintenance of the *status quo* in the world except as changed by orderly legislative and possibly judicial processes", Mr. Schweppe pointed out. "There are a great many forces in the world today of a revolutionary character that are violently opposed to the maintenance of the *status quo* . . . and whether that objective can be achieved in our lifetime, I do not know." Even in the so-called free world, Mr. Schweppe went on, there are many nations that "have become strongly socialist in their economic and political inclina-

tions, and many of whom are nations who would also like the *status quo* changed." He promised that the Committee would bring forth a report that will "not recommend committing the United States to any program which in our lifetime, or in the lifetime of our children and grandchildren, will endanger the security of the United States through being over-optimistic in the achievement of this noble and desirable goal."

The reports of the Sections of International and Comparative Law, Mineral and Natural Resources Law and Municipal Law were received and filed.

International Law Planning

The report of the Committee on International Law Planning was given by the Committee Chairman, Thomas E. Dewey, of New York City. Prefacing his statement, Mr. Dewey said: "If I fell into the spirit of the occasion, I would say the report of the Committee is printed and before you, and I would leave it to you to read it. But I was asked to make this speech, and they seemed to think I should, so I want you to know that I am not voluntarily interrupting the joyous gallop through this program which is a little on the late side, as I understand it." (Because of the importance of the work of this Committee, Mr. Dewey's report is published as a separate article in this issue of the JOURNAL, beginning at page 1047.)

At the conclusion of Mr. Dewey's report, R. E. Robertson, of Juneau, Alaska, rose on a point of personal privilege. "I am probably one of the oldest members of this Association", he said. "I think I have belonged to it since 1913. I have been a member of this House of Delegates since 1945. I have been a State Delegate from the Territory of Alaska. Today, I am happy to announce that, through the help of many of my friends here, I am now a State Delegate from the State of Alaska."

Co-operation with American Medical Association

Frank C. Haymond, of Charleston, West Virginia, reporting for the Committee To Co-Operate with the American Medical Association, of which he is Chairman, offered the following resolutions:

1. That the National Interprofessional Code for Physicians and Attorneys, in the form set forth in this report, prepared by the members of this special committee and the members of the special committee of the American Medical Association, and unanimously approved by both committees, be adopted.

2. That false statements and intemperate or abusive criticism of members of the legal profession or the medical profession by members of either profession are to be deplored and are emphatically disapproved as unfair to the members of both professions, as misleading and misrepresentative of the recognized and established ethical standards of both professions, and as tending to weaken or destroy the confidence of the public in each profession and to impede and disrupt the effective promotion of closer co-operation between doctors and lawyers in their interprofessional relations; and that any complaint or criticism by a member of either profession against the other profession or any of its members in their professional capacity should be made to his own association and by it referred to the appropriate association of the other profession for prompt and effective action by the association receiving such complaint or criticism.

3. That this Special Committee be continued.

Judge Haymond outlined the provisions of the Code (the Code itself will be published in a later issue of the JOURNAL) and advised the House that it had been approved by the American Medical Association. The second resolution, he said, resulted from "certain isolated general attacks by individual doctors and lawyers against lawyers and doctors in general. The Committee felt that this type of conduct should not pass unnoticed."

The House adopted the recommendations without debate.

Committee on Commerce

Benjamin Wham, of Chicago, the Chairman of the Committee on Commerce, offered a "non-controversial resolution" whose object, he explained, was "to simplify the method of obtaining congressional approval of interstate compacts, which are matters of growing importance." The House voted to adopt the resolution, which was as follows:

WHEREAS, The interstate compact represents a desirable means of providing needed public services and programs within the existing framework of the federal system and there is expanding use of such compacts; and

WHEREAS, The National Association of Attorneys General during 1956-1958 has studied the problem facing the states of protracted delays in obtaining congressional consent to such compacts through the traditional (though not constitutionally required) procedure of enactment of a bill or joint resolution; and

WHEREAS, The Association has developed and endorsed a proposed Federal Interstate Compact Consent Procedure Act designed to secure more expeditious consideration of compacts by the Congress and this proposal has been introduced in the 85th Congress as S. 3428; and

WHEREAS, This proposed act contemplates that the consent of the Congress shall be deemed to have been granted to a compact if, within a specified period of time following its transmittal to the Congress (a copy thereof having also been transmitted to the President of the United States), the Congress or either House thereof shall not have passed a resolution stating in substance that consent is not granted; and

WHEREAS, This alternative procedure is already employed by Congress with respect to Civil Defense Compacts (50 U.S.C.A. 2281) and, if enacted, the bill would effect a desirable improvement over the existing procedure;

NOW THEREFORE, BE IT RESOLVED, That the American Bar Association approves in principle the proposed Federal Interstate Compact Consent Procedure Act now pending in Congress as S. 3428.

Section of Taxation

Lee I. Park, of Washington, D. C., the Chairman of the Section of Taxation, then reported that that Section had twenty-six proposals to submit to the House, most of them dealing with technical changes in the Internal Revenue law. Of these, he said, eight had been controversial when they were presented to the Section. He

offered the non-controversial recommendations first, and they were approved by the House without debate. The Section's report summarized them as follows:

1. To amend the Section by-laws with respect to dues.

2. To restore the Chief Counsel of the Internal Revenue Service to his position as a statutory officer appointed by the President and confirmed by the Senate.

3. To simplify the rules relating to constructive ownership of stock.

4. Satisfying requirements of Section 337 by distribution to shareholders through a liquidation trust or agency.

5. Treatment of involuntary conversion as a sale or exchange for purposes of Section 337.

6. Successive liquidations of controlled corporations for purposes of Section 337.

7. Exclusion from dividend carryover in complete liquidation of subsidiaries.

11. Burden of proof in Section 531 cases.

12. Definition of "employer" for purposes of the Federal Unemployment Tax Act.

13. Application of annual gift tax exclusion to certain gifts of future interests.

14. Estate tax treatment of renounced or disclaimed interests.

15. Gift tax treatment of renounced or disclaimed interests.

16. Extending period of limitations on credit for state death taxes.

19. Deduction for personal exemption for a foster child or child awaiting adoption.

20. Loss or other deduction in connection with demolition.

22. Amortization period for corporate organization expenses.

24. Judicial review of the existence of jeopardy where a jeopardy assessment has been made.

25. Release of funds from jeopardy assessments.

Mr. Park then offered the controversial proposals one at a time. The first (No. 17 in the Committee's report) would exempt securities of regulated investment companies from federal stamp taxes on issuance and transfer. Mr. Park explained that there was no question about the fairness of this proposal on the part of the Section, but the opposition to it felt that this was a matter applying to a limited number of taxpayers who were in a position to take care of themselves and that the Tax Section should not concern itself with the issue.

The House voted to adopt the recommendation.

Mr. Park's second controversial proposal (No. 18 in the Section's report) was to clarify the manner in which patronage dividends are deductible by a co-operative and taxable to its patrons. This resolution, which had been finally approved by the Section on a close ninety-six to eighty-four vote, proved to be equally controversial in the House of Delegates. Mr. Park explained that the problem here concerned a 1951 statute providing that the income of a farmers' co-operative that is specifically allocated to the patrons, whether distributed or not, is taxable income to the patron and not to the co-operative. "The Senate report on that bill made it clear", Mr. Park said, "many in the Tax Section thought at least that the business income of a co-operative was to be taxed to either the co-operative or the patron in the year earned, somewhat like trust income. The co-operative had the discretion to decide whether it would be taxed to the co-operative or to the patron. It could allocate, in which event it made it taxable to the patron. Or it could not allocate, and it would be taxable to the co-operative." However, continued Mr. Park, Congress did not go on to say specifically that the income would be taxed in the year in which it was allocated or in any other year; when a case reached the courts, it was held that the patron who had received a certificate of allocation from the co-operative received income only to the extent of the fair market value of whatever he received. The proposal of the Section would make the full amount of the allocation taxable to the patron, provided certain conditions were met.

R. E. H. Julien, of San Francisco, said that while he was not opposed to this proposal, he did feel that it represented an example of the complexity of some matters that are presented to the House. He had expressed anxiety about bloc approval of complex matters at the 1957 Annual Meeting, he recalled, and this was an example of the difficulty that he meant.

William A. Sutherland, of Atlanta, Georgia, declared that he was opposed to the resolution. There was a good deal in the Senate debate to suggest that the Congress had intended to leave it so that a particular co-operative would be in no way disturbed in its handling of its revolving funds, he said. "If you say the farmer is entitled to $1,000 in refund, and you are going to pay him five years from now, and he has to pay [the taxes] now . . . he hasn't anything with which to pay. So, to be practical", Mr. Sutherland said, "it is obvious that some refund must be distributed at that time, and this is an enforcement of distributing the working funds of the co-operative. The opinion of those of you who have studied it is as sound as mine", Mr. Sutherland declared. "Those of you who have not, I hope you will vote against it because I think we are dealing with something very fundamental."

In reply to a question put by Guy Richards Crump, of Los Angeles, William B. Spann, of Atlanta, Georgia, said that the issue was whether the money in the co-operative's revolving fund at the end of the year was to be taxed to the co-operative or whether the tax was to be deferred. His position was, he added, that the tax ought to be levied when the money was paid to the farmers, and the co-operatives ought to be permitted to hold it as a revolving fund.

There was further discussion, but because of the lateness of the hour, the House recessed at 12:15 P.M. without voting on the proposal.

Fifth Session

The Fifth Session of the House convened at 9:30 on the morning of Friday, August 29, with Chairman Shepherd presiding.

Mr. Park, for the Section of Taxation, moved adoption of the resolutions of his Section numbered 8, 9, 10, 21, 23 and 26. These were controversial resolutions, he said, but not in the

sense that No. 18 was controversial: There was a vigorous debate in the Section meeting as to whether the language was exactly right, or whether perhaps an alternative which was designed "to accomplish practically the same objective should be adopted", Mr. Park said, "but when the final vote came there was no question that there was a great majority favoring the particular legislation and that legislation in the particular area was needed."

The House voted to adopt the six resolutions. As summarized in the Section's report, they dealt with the following subjects:

8. To oppose the recommendation of the Mills Advisory Group on Subchapter C relating to dividends payable in stock on certain shares and in cash on other shares.

9. To oppose the recommendation of the Mills Advisory Group on Subchapter C regarding charitable contributions of Section 306 stock.

10. Relationship between the Tax Court and the Courts of Appeals in cases where the Tax Court refuses to follow a rule of law adopted by the Court of Appeals to which an appeal could be taken.

21. Net operating loss deduction.

23. To provide that for a period that cannot exceed forty-eight months distributions by estates shall be treated in the same manner for federal income tax purposes as they are treated for probate purposes under local law, etc.

26. Deduction of litigation expenditures even though title to property is involved.

The House then turned again to the consideration of the Tax Section's Resolution No. 18.

Mr. Crump moved that the resolution be laid on the table, saying "in my opinion [it] is a matter of economic policy, substantive law, and one which this House should not pass upon".

The motion to lay on the table was put to a vote and carried.

Section of Patent Law

James P. Burns, of Washington, D.C., the delegate of the American Patent Law Association, speaking for the Section of Patent, Trademark and Copyright Law, announced that the Secretary of Commerce had issued a new ruling that prohibits advertising by those who practice before the Patent Office. Less than two per cent of that Bar have ever indulged in that activity, Mr. Burns said, and it has been a continuing fight for over a quarter of a century to eliminate it.

Committee on Regional Meetings

Lewis F. Powell, Jr., of Richmond, Virginia, the Chairman of the Regional Meetings Committee, reported on three successful Regional Meetings during the past year in Louisville, Atlanta and St. Louis. The total paid attendance, he said, was about 2,800, one of the largest since the inauguration of the Regional Meetings program in 1951. "We are reverting this year", Mr. Powell said, "to the policy of two Regional Meetings, one in the fall and one in the spring. The fall Regional Meeting will be held in Portland, Maine; the spring meeting will be held in Pittsburgh, Pennsylvania, next March." He also announced a Regional Meeting for Memphis, Tennessee, in November, 1959, and for Portland, Oregon, for the spring of 1960. He urged the members to attend the forthcoming Portland, Maine, meeting, declaring that it promised to be one of the finest.

Board of Governors' Report

Secretary Calhoun, reporting for the Board of Governors, asked the House to approve a decision of the Board that Law Day—U.S.A. be observed again on May 1, 1959, and that the President of the United States be asked to issue a proclamation with respect thereto.

A motion to approve this recommendation was duly adopted.

The Board of Governors' report also noted several important actions taken by the Board since the Midyear Meeting of the House of Delegates in February. These actions included the following:

1. Endorsement of the Highway Laws Project undertaken several years ago by the Highway Research Board, a unit of the National Academy of Sciences. The project consists of a comprehensive survey of the highway laws of the various states.

2. Endorsement of S. 3151, H.R. 10488 and H.R. 10511, identical bills to simplify and codify existing law with respect to state and federal cooperation in highway construction.

3. Endorsement of S. 1615, to prohibit removal to federal district courts of actions commenced in state courts under state workmen's compensation laws.

4. Endorsement of H.R. 3046, permitting the transfer of cases from federal district courts to the Court of Claims and *vice versa*.

5. Endorsement of H.R. 3817, authorizing the Judicial Conference to promulgate minimum standards of qualifications for probation officers.

6. Endorsement (except for Subsection (f)) of S. 1000, permitting suits to be filed in the district where the tort occurred as well as in the districts where the plaintiff or defendant resides.

7. Endorsement of H.R. 6788, to simplify the record on review of the orders of administrative agencies.

8. Endorsement of H.R. 6789, to shorten the notice required for administrative agencies.

9. Endorsement of H.R. 6238, to authorize the courts of appeals to allow appeals from interlocutory orders in civil actions when the district judge states in the order that it involves a controlling principle of law.

10. Endorsement of S. 1011 and H.R. 8361, to limit the jurisdiction of federal district courts with respect to habeas corpus proceedings brought by persons in custody pursuant to judgments of state courts.

11. Endorsement of H.R. 108, to authorize the appointment of public defenders or the payment of compensation to counsel appointed by federal courts to help indigent defendants accused of crimes.

12. Authorizing the Association's Committee on Public Relations to enter into a contract for a series of dramatic productions on television dealing with civil rights decisions of the United States Supreme Court.

13. Reaffirmance of Association opposition to S. 2646, the Jenner Bill, which would limit the jurisdiction of the Supreme Court.

14. Endorsement of the principle that the immigration and nationality responsibilities now vested separately in the Department of State and the Attorney General be consolidated into the Department of Justice or an independent agency of the Government.

15. Expression of opposition to any federal statute requiring or permitting federal incorporation of business enterprises.

On his motion, the House voted to approve the Board's decisions.

The report of the Traffic Court Committee was received and filed.

Unemployment and Social Security

Earl F. Morris, of Columbus, Ohio, the Chairman of the Committee on Unemployment and Social Security, offered the following:

1. That the American Bar Association go on record as opposing the Forand Bill (H.R. 9467);
2. That this action be communicated at the proper time and in the appropriate way to the appropriate committees of Congress.

Mr. Morris explained that the Forand Bill would provide for hospital, nursing care and surgical payments for persons eligible for benefits under the Old Age and Survivors Insurance Provisions of the Social Security Act. Mr. Morris said that a thorough study of the problem of medical and hospital care for the aged was needed, but that his Committee felt that the "drastic step" represented by the Forand Bill is not wise, certainly at present. The American Medical Association is vigorously opposed to the proposal, he noted, while the A.F.L. and C.I.O. are strong supporters. The Bill, Mr. Morris said, would provide for payments for hospitalization and nursing care to be made directly to various hospitals, nursing homes and physicians. This was, in the Committee's view, in conflict with the basic concept of Social Security and might involve danger of federal control over the hospitals, nursing homes and physicians. Furthermore, there was doubt about the actuarial soundness of the proposals for funding the payments and it was felt that private plans have not been given adequate opportunity to meet the need for hospitalization, nursing care and surgical treatments for the aged.

Mr. Morris moved adoption of the resolution, but Mr. Miller of Louisiana, moved that action be deferred until the February meeting. Congress has adjourned, Mr. Miller argued, and the bill will have to be reintroduced anyhow.

To this Mr. Morris replied that the bill might be economic legislation, but the provision of the By-Laws of the Association under which the Committee on Unemployment and Social Security was created provides that the Committee shall study existing and proposed laws and regulations concerning such matters. Furthermore, since lawyers are now covered by Social Security, they have an important stake in the program, he said. There was no question but that the bill would be introduced in the 86th Congress, he added.

Mr. Sutherland, of Georgia supporting Mr. Miller's motion, said that questions of the amount of tax increases were frequently presented to the Section of Taxation, and are considered "one of the things upon which everybody has agreed that this body [the House of Delegates] should never speak". Certainly the Forand Bill is not going to be passed before February, he argued.

Mr. Miller's motion to defer action was then put to a vote and lost, and the House proceeded to adopt the resolution.

Mr. Morris then summarized the sec-

ond portion of his report, dealing with the financial stability of the Social Security System, a question raised at the midyear sessions of the House by William Logan Martin, of Birmingham, Alabama. Mr. Morris said that the Old Age and Survivors Insurance fund was a trust fund in the hands of three members of the Cabinet, and, until this past year, there has always been a surplus of receipts over benefits. This surplus is paid into a separate fund in the Treasury from which benefits and administrative costs are paid. When there is an excess of contributions over benefits, the accumulation is invested in government securities. The fund now amounts to 23 billion dollars, and is now on a pay-as-you-go basis, Mr. Morris said—that is, an attempt is made to balance the contributions and the benefits that are to be paid, with the $23 billion being held as a reserve. There are arguments on both sides whether this fund should be larger or smaller, he continued, and it is difficult to be categorical about this question. Mr. Morris said that the Committee, after studying the problem, had determined that the fund as now constituted is sound. The Committee felt, he went on, that the real issue in Social Security is whether or not the benefits, and therefore, the tax base and amount of taxes are to be constantly increased as they have been in each election year since 1950. "In other words", Mr. Morris said, "as we see it, the real problem in Social Security is whether changes of that type are to be made with an eye toward the ballot box or whether they are to be made on the basis of sound principles of social insurance. . ."

Mr. Martin said that he questioned the investments in which the Social Security contributions have been put. "The money is taken out of the Social Security Fund by the Secretary of the Treasury" he said, "is loaned to the Secretary of the Treasury on the other side of the desk, following which he puts it in these non-negotiable certificates of indebtedness. The question is, if any of those funds are ever needed, how are they going to be recovered? That money has been spent for ordinary expenses of government." The answer is, Mr. Martin went on, that the Congress will appropriate the money out of the Treasury if those funds are needed, and we shall be taxed to provide for the payments.

Federal Rules of Procedure

Edward E. Murane, of Casper, Wyoming, the Chairman of the Committee on Federal Rules of Procedure, said that his Committee had had no major activities for the past six months because one of its functions was to cooperate with the Judicial Conference on the Federal Rules, and it was late summer before Congress designated the Conference as the active body to handle preliminary matters incident to changes in the Federal Rules. However, he said, there are five committees to report to the conference on proposed amendments to the Federal Rules, the committees to be divided into civil procedure, criminal procedure, maritime law, bankruptcy proceedings and appellate procedure. "It is hoped and planned to carry on meetings in each of the ten circuits on each of these five subjects so that the practicing lawyer may have a voice in what amendments and changes will be submitted" Mr. Murane said.

On his motion, the House voted to continue the Committee.

Committee on Federal Legislation

Willoughby A. Colby, of Concord, New Hampshire, in the absence of the Chairman of the Committee on Federal Legislation, Senator Upton, of New Hampshire, moved the adoption of the following:

1. RESOLVED, That the Special Committee on Federal Legislation be continued with powers and duties conferred upon it by the resolution of the Board of Governors, and
2. RESOLVED, That the Advisory Committee associated with the Special Committee on Federal Legislation be continued, and that it consist of one member from each of the forty-nine states, the District of Columbia, Hawaii and Puerto Rico.

The resolutions were adopted without debate.

Committee on Military Justice

Franklin Riter, of Salt Lake City, Utah, the Chairman of the Committee on Military Justice, moved adoption of the following:

RESOLVED, That the House of Delegates of the American Bar Association approves and recommends legislation which will amend Section 846, Chapter 47, Title 10, U.S. Code, so that the same will read as follows:

The trial counsel, the defense counsel, and the court martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, or the Territories, Commonwealths, and possessions. However, in the case of a witness who is not a person subject to this

chapter, and who is in the United States, or its Territories, Commonwealths or possessions, a warrant of attachment or arrest to compel his appearance shall be served only by a United States marshal or deputy marshal. Any United States marshal or deputy marshal shall serve such a warrant of attachment or arrest which has been issued in a court-martial case.

RESOLVED FURTHER, That the Special Committee on Military Justice is authorized to cause to be introduced in Congress a bill of the foregoing purport and purpose and to appear on behalf of the American Bar Association before Committees of Congress in support of such measure.

General Riter explained that this resolution was the result of a case arising in California, where a lawyer subpoenaed to appear before a military court of inquiry ignored the summons; a writ of attachment was issued and the lawyer was taken bodily by a marine sergeant and brought before the court. General Riter said that his Committee had concluded that there was no necessity to limit the power of the military to serve subpoenas upon civilians through military officers, but that bodily arrest should be placed in the hands of a United States marshal, and it was the purpose of the resolution to sponsor such legislation. "We don't think the military will object to it" General Riter said. "In fact, we consulted with some of our friends in the Service, and they welcome it because it removes one of those points of friction that they are very anxious to remove."

The House voted to adopt the resolution.

The House also voted to adopt the following on General Riter's motion:

That the Special Committee on Military Justice be continued with the same authority vested in it as heretofore granted it.

Individual Rights, National Security

Ross L. Malone, of Roswell, New Mexico, the Chairman of the Committee on Individual Rights as Affected by National Security, reported briefly for that Committee. He told the House that the Board of Governors had considered an interim report of the Committee and had reaffirmed the Association's opposition to the so-called Jenner Bill, which would limit the Supreme Court's jurisdiction in certain types of cases.

On Mr. Malone's motion, the House voted to continue the Committee.

Committee on Communist Tactics

The Committee on Communist Tactics, Strategy and Objectives had four resolutions to offer to the House. Peter Campbell Brown, of New York City, the Chairman of the Commitee, moved that the House follow the recommendations of the Board of Governors on these resolutions.

Secretary Calhoun reported the views of the Board. As to the first resolution, favoring enactment of S. 654, dealing with the supersession by Congress of state laws against sedition, the Board recommended that no action be taken since Congress had already acted upon the legislation in question. As for the second and third resolutions, dealing with legislation to deny passports to Communists and with federal employee security risks, the Board recommended that these proposals be referred back to the Committee on Communist Tactics, Strategy and Objectives and to the Committee on Individual Rights as Affected by National Security. The fourth resolution, that the Committee on Communist Tactics be continued, was approved by the Board.

The House voted to follow the Board's recommendations.

Committee on Income Tax

William Logan Martin, of Birmingham, Alabama, the Chairman of the Committee on Income Tax—Submission of Amendment, moved that the Committee be continued. Mr. Martin reminded the members of the purpose of the constitutional amendment that his Committee was advocating for the Association—to limit income taxes to 25 per cent of the income except when three fourths of both houses of Congress vote to lift this limit, and to prohibit a margin of more than 15 per cent between the highest and lowest rates for individual income tax.

The House voted to continue the committee.

Committee on Lawyers in the Armed Forces

Osmer C. Fitts, of Brattleboro, Vermont, the Chairman of the Committee on Lawyers in the Armed Forces, said that three fourths of the state bar associations and over a hundred local bar associations had passed resolutions favoring incentive pay for officers in the legal departments of the Armed Forces. The Committee had not been successful in getting its program enacted, said Mr. Fitts, but it had succeeded in getting the problem recognized, and the Cordiner Bill, which was

enacted, did grant incentive and efficiency pay to the Armed Forces although it did not recognize military lawyers as such.

On his motion, the House voted to continue the Committee.

The report of the Committee on Aeronautical Law was received and filed.

Committee on Public Relations

Richard P. Tinkham, of Hammond, Indiana, the Chairman of the Committee on Public Relations, moved that the Special Committee and the Advisory Committee on Television and Motion Pictures, the special advisory committee, be continued.

The motion was put to a vote and was carried.

The report of the Committee on Legal Assistance for Servicemen was received and filed.

Washington Committee

The report of the Washington Committee was delivered by Robert M. Benjamin, of New York City, in the absence of Committee Chairman Francis W. Hill, of Washington, D. C. Mr. Benjamin moved adoption of the following.

1. That the American Bar Association oppose bill S. 2191 in its present form.
2. That the American Bar Association encourage the study of bill S. 2191 by the organized Bar.
3. That the Washington Committee or some other committee or section designated by the Board of Governors continue its study and report to this House its recommendations with respect to the details of the lobbying legislation which the American Bar Association should support.

Mr. Benjamin explained that S. 2191 is a bill to amend the Federal Regulation of Lobbying Act of 1946.

The House voted to adopt the resolution, the third paragraph of which Mr. Benjamin added when he introduced the measure, saying that it was felt that the original form was "too negative".

Commissioners on Uniform State Laws

James C. Dezendorf, of Portland, Oregon, the President of the National Conference of Commissioners on Uniform State Laws, asked the House to approve the following: Uniform Simplification of Fiduciary Security Transfers Act, Uniform Estate Tax Apportionment Act, Uniform Facsimile Signatures of Public Officials Act, Uniform Mandatory Disposition of Detainers Act, as well as amendments to the following: Uniform Reciprocal Enforcement of Support Act, Uniform Principal and Income Act, Uniform Securities Act and Uniform Narcotic Drug Act.

The House voted to approve the acts and the amendments.

The reports of the Section of Family Law and the Committee on Facilities of the Law Library of Congress were received and filed.

Resolutions Committee

Chairman Shepherd reported that only one resolution had been approved by the Assembly, a resolution condemning the execution of former Premier Imre Nagy, former Defense Minister Pal Meleter and a number of their associates in Hungary.

It was moved, seconded and carried that the House concur in the action of the Assembly and adopt the resolution.

Committee on Draft

W. Harry Jack, of Dallas, Texas, reporting for the Committee on Draft, offered the following two resolutions, which were adopted without debate:

I.

WHEREAS, The National Bar Association of Norway will hold its meeting in Oslo on September 16 and 17, 1958, to observe the 50th year of its existence,

NOW, THEREFORE BE IT RESOLVED, That the American Bar Association at its 81st Annual Meeting convened at Los Angeles, California, conveys to the members of the notable Norwegian National Bar Association its sincere felicitations, congratulations and good wishes for its many accomplishments, particularly in the field of the improvement of the administration of justice.

BE IT FURTHER RESOLVED, That the President of the American Bar Association cause to be presented to the Honorable President of the National Association of Norway a copy of this resolution.

II.

WHEREAS, The Eighty-First Annual Meeting of the American Bar Association in Los Angeles is drawing toward a successful conclusion,

RESOLVED, That the American Bar Association, to this City of Los Angeles and State of California, the host of many and varied visitors, expresses its genuine pleasure in the warmth and freshness of its reception, and an understanding of Mayor Poulson's suggestions that we not migrate here from the homes to which we return.

For the many hours of hard work and the great effort of the individuals and associations who have made this a pleasant, enjoyable and effective meeting, we offer our sincere thanks, and the hope that the communities from which we come may sometime have the opportunity of welcoming you.

The following Special Committees were continued on motion of Secretary Calhoun: Committee on Atomic Energy Law, the Washington Committee, the Committee on Rights of the Mentally Ill.

Glenn M. Coulter, of Detroit, Michigan, Chairman of the Committee on Rules and Calendar, said that the Lawyers Club of San Francisco qualified for admission as an accredited local bar association and, on his motion, the House voted to admit it as an affiliated local bar association.

The House then adjourned *sine die* at 10:55 A.M.

Classified

RATES *25 cents per word for each insertion; minimum charge of* **$2.50 payable in advance.** *Copy should reach us by the first day of the month preceding month of issue. Allow two extra words for box number. Address all replies to blind ads in care of* AMERICAN BAR ASSOCIATION JOURNAL, *1155 East 60th Street, Chicago 37, Illinois.*

BOOKS

USED LAW BOOKS AT ATTRACTIVE prices. We buy and sell either one book or a complete library. Let us quote you prices. HARRY B. LAKE, 321 Kearney Street, San Francisco 8, California.

LAW BOOKS BOUGHT AND SOLD: COMplete libraries and single sets. CLARK BOARDMAN CO., LTD., 11 Park Place, New York City.

FOR A PROMPT CASH OFFER ON LAW books, write The Michie Company, Charlottesville, Virginia.

THOMAS LAW BOOK COMPANY PUBLISHers. We Sell, Buy and Exchange. Incorporated 1885. St. Louis 2, Mo.

LAW LIBRARIES OR LESSER COLLECtions of esteemed used law books purchased. Price list free on request lists some used law books we have for sale, also indicates the type materials we will purchase. Claitor's Book Store, Baton Rouge 2, Louisiana.

"THE HAND OF HAUPTMANN," STORY of Lindbergh Case by Document Expert cited by John Henry Wigmore, 368 pages, 250 Illustrations. Price $5.00. J. V. HARING & J. H. HARING, 15 Park Row, New York 38, N Y.

WHEN YOU HAVE A DOCUMENT PROBlem of any kind send for "Questioned Documents, Second Edition." 736 pages, 340 Illustrations, $12.50 delivered. Also "The Problem of Proof", 539 pages, $10.50 delivered. ALBERT S. OSBORN, 233 Broadway, New York 7, N. Y.

LAW BOOKS — WE CAN SUPPLY THE following sets at this time: U.S. Attorney General Opinions, complete sets of odd volumes—Decisions of the Commissioner of Patents, complete sets or odd volumes, American Law Reports complete including Digest. ALSO, the following complete Law Reviews: Notre Dame Lawyer, Marquette Law Review, Yale Law Journal, Harvard Law Review. Also all Law Reviews and Periodicals published in the U.S.A. Write us for your every law book need. DENNIS & CO., INC., 251 Main St., Buffalo 3, New York.

LAW BOOKS BOUGHT, SOLD, EXchanged. Free Catalogue. IRVING KOTHS, 516½ Main St., Vancouver, Washington.

LAW BOOKS BOUGHT AND SOLD: COMplete libraries and single sets. CECIL SKIPWITH, 108 East Fourth Street, Los Angeles 13, California.

IS THE DOCUMENT AUTHENTIC? CONsult—*Scientific Examination of Questioned Documents* by Ordway Hilton, 1 Vol., illustrated, $15.00 delivered. Callaghan & Company, 6143 N. Cicero Avenue, Chicago 46, Illinois. ". . . it would be well worthwhile for all lawyers and bankers to study this work," advises Erwin W. Roemer in a recent review in ABA Journal.

WRITE US FOR YOUR TEXT BOOK NEEDS. Good used law books bought, sold and exchanged. (In business 50 years.) THE HARRISON COMPANY, 93 Hunter Street, S. W., Atlanta 2, Georgia.

LOWEST PRICES USED LAW BOOKS COMplete stocks on hand, sets and texts, Law Libraries appraised and bought. NATIONAL LAW LIBRARY APPRAISAL ASSOCIATION, 127 South Wacker Drive, Chicago 6, Illinois.

FOR SALE

EDISON VOICEWRITER NEVER USED, with accessories $250.00. Standard Elite Royal Typewriter $75.00. Room 850, 230 Park Avenue, New York City. MU 5-4431.

FEDERAL REPORTER 1ST AND 2ND series, and Federal Supplement; also The American Digest, Century Edition to Sixth Decennial inclusive; all complete to date and in excellent condition. Write Suite 1121, 15 Exchange Place, Jersey City, New Jersey. Phone HEnderson 4-2230.

AMERICAN DIGEST SYSTEM, COMPLETE with indexes, Century through Fifth Decennial and General Digest through 1957 (Buckram). Excellent condition. Ehringhaus and Ellis, Box 1776, Raleigh, North Carolina.

U. S. SUPREME COURT REPORTS, LAWyers Edition, all buckram, complete with Digest. Bargain. Terms. Box 8N-8.

HENDERSONVILLE, NORTH CAROLINA—Lovely 4-bedroom brick home with acreage, heart of mountains; 2 bathrooms; masonry basement; automatic hot water heat. Opportunities unlimited. Complete information. P. O. Box 225, Berwyn, Ill.

HANDWRITING EXPERTS

HARRY M. ASHTON, 4574 FOURTEENTH Ave., North, St. Petersburg, Fla. DIckens 2-2391. Over 30 years with Post Office Department. Qualified in all courts. Completely equipped laboratory for handling all types of document problems. Member American Academy of Forensic Sciences. Listed in Martindale-Hubbell Law Directory.

RICHARD BOWEN, DETROIT 27, MICH. 27 years' experience. Qualified in all courts. Completely equipped laboratory. 10023 Hubbell Ave. VErmont 7-6454.

DONALD DOUD, CHICAGO & MILWAUKEE. Nationwide experience includes U.S. vs. Hiss, Ill. vs. Hodges. Complete laboratory facilities. Experienced expert witness. Member: American Society Questioned Document Examiners, 312 E. Wisconsin, Milwaukee: Temple Building, Chicago.

VERNON FAXON, EXAMINER OF QUESTioned documents. Opinions rendered re: Handwriting, typewriting, erasures, interlineations, substitutions on wills, deeds, contracts, books of account, and all kinds of documents. Suite 1408, 134 North LaSalle Street, Chicago 2, Ill. Telephone: CEntral 6-1050.

E. H. FEARON, BESSEMER BUILDING, Pittsburgh 22, Pa. Office telephone: ATlantic 1-2732; residence telephone: TEnnyson 5-7865. Scientific examination of disputed documents. Completely equipped laboratory. Photographic exhibits including third dimension and color made to demonstrate facts in court. Nationwide experience.

BEN GARCIA, EXAMINER OF QUESTIONED handwriting and typewriting. Qualified expert. Over 15 years' experience. 810 E. & C. Building, Denver, Colorado. Phone AComa 2-2360.

LINTON GODOWN, MEMPHIS, EXAMINER handwriting, signatures, typewriting, inks, alterations, etc. Portable laboratory equipment. Reports. Exhibits. Experienced, qualified witness. Member ASQDE. 1830 Exchange Bldg., JAckson 5-1711.

HARRIS & HARRIS, 510 SOUTH SPRING Street, Los Angeles, telephone MAdison 5-1518 and 703 Market Street, San Francisco, telephone DOuglas 2-4329. Discovery and proof of facts relating to disputed handwriting, typewriting, inks and papers. Over 25 years' experience. Qualified in all courts. Members: American Society of Questioned Document Examiners.

LUKE S. MAY, CONSULTING EXPERT & examiner of "Questioned Documents." Qualified all courts United States and Canada. Advanced Scientific Evidence Laboratories for proof of facts, all types disputed papers. Phone Elliott 2445, 843 White-Henry-Stuart Building, Seattle 1, Washington.

M. A. NERNBERG, EXAMINER OF DISputed Documents. Thirty years' experience. Formerly specially employed by the United States Government as handwriting expert in cases involving handwriting. 3219 Grant Building, Pittsburgh, Pa. Phone ATlantic 1-1911.

WM. H. QUAKENBUSH—30 YEARS' EXPErience in the disputed document field. Qualified in all courts. Fully equipped laboratory. Listed in Martindale-Hubbell Directory. Phone VI 3-7826, Box 424, Lawrence, Kansas.

KARL SCHOTTLER, ST. LOUIS, MO., Telephone GArfield 1-3399. Scientific Technique in Document Examination.

CHARLES C. SCOTT, KANSAS CITY, MO. Author: *Photographic Evidence.* Handwriting and typewriting identified. Forgeries and alterations detected. Faded and obliterated writing deciphered. Nationwide experienced consultant and expert witness. Commerce Trust Building, VIctor 2-8540.

DR. WILMER SOUDER, CONSULTANT. REports. Exhibits. Testimony. 30 years' experience in State and Federal Courts while a career member Scientific Staff, National Bureau of Standards. 3503 Morrison St., N. W., Washington 15, D. C. Phone: WOodley 6-3050.

HANNA F. SULNER, NEW YORK CITY. Qualified examiner of all kinds of questioned documents; expert testimony illustrated. 35-30 81 Street, Jackson Heights 72, New York. IL. 8-6176.

GEORGE G. SWETT, DOCUMENT EXPERT with Post Office Department 12 years. Handwriting, typewriting and other document problems considered. Photographic laboratory maintained. Nation-wide qualification. Member ASQDE, 14 South Central, St. Louis 5, Mo. PArkview 5-9394.

HERBERT J. WALTER (1879-1958) LINTON GODOWN—Examiners and Photographers of Questioned Documents. Member A.S.Q.D.E., Fellow A.A.F.S. Suite 2210, 100 North LaSalle St., Chicago 2—phone CEntral 6-5186.

GEORGE L. WHITE, EXAMINER OF QUESstioned Documents, 4229 Brook Road, Richmond, Virginia.

MISCELLANEOUS

VALUATION OF CLOSE CORPORATION stock. Thoroughly documented appraisals prepared for gift and estate tax purposes, sales, mergers, recapitalizations, etc. A background of effective cooperation with attorneys, accountants, executors, and financial institutions. For information, call or write MANAGEMENT PLANNING, INC., 192 Nassau Street, Princeton, New Jersey (Walnut 4-4200).

ALL-IN-ONE COMPLETE CORPORATE OUTfit, $15.00 up. Stock Certificates, Transfer Ledger, plain sheets—all items fit in our minute book cover with a slipcase—seal individually boxed. Regular Conventional Outfit—separate books, desk seal, all in a strong box, $15.00 up. Printed minutes, Bylaws suitable for all states, $1.00 extra. Catalog upon request. Julius Blumberg, Inc., 78 Exchange Place, New York 4, N. Y.

POSITIONS WANTED

NEWSPAPERMAN-ATTORNEY SEEKS POsition blending both writing and law. Five years' newspaper experience, member D.C. bar. Veteran, 29, three children. Box 8S-6.

ATTORNEY, 33; MARRIED, TWO CHILdren, veteran; 6 years in general practice. Must relocate in Arizona or California because of son's hay fever. Desires position with firm or corporation. Box 8N-1.

ATTORNEY; AGE 34, B.B.A., M.B.A. & LL.B.; Texas Bar; over seven years' experience in personnel work, particularly Labor Relations; holding good position now; seeks association with firm or another company offering potential growth. Box 8N-2.

ATTORNEY; 27; COIF, JD; 3 YEARS' GENeral and tax experience with prominent Wall Street law firm; married. Interested in litigation or general practice with established attorney. Will relocate. Box 8N-3.

ATTORNEY, EARLY THIRTIES, MARRIED, law review, six years' specialized tax experience with federal government and large New York law firm, seeks opportunity for imaginative tax planning with growing law firm or large corporation. Box 8N-4.

ATTORNEY, 32, B.S., LL.B., KANSAS BAR. Experienced in general corporate law, contracts and corporate administration. Currently on legal staff of major manufacturing corporation engaged in commercial and Government business. Desires position with corporation or firm in Midwest. Box 8N-5.

CHICAGO ATTORNEY—8 YEARS' PRACtice—seeking association with law firm, house counsel, mortgage or real estate in Minnesota—Minneapolis preferred. Box 8N-6.

ATTORNEY, LICENSED TEXAS, PENNSYLvania. Experience labor law, foreign marketing. Good languages. Seeks position, Southwest or foreign. Box 8N-7.

CORPORATION ATTORNEY, PHI BETA Kappa, LLB Harvard, 2 years' private practice, 7 years with major food company. Member New York and New Jersey bars. Very broad experience real estate, anti-trust, commercial law, mergers, appearances before state and federal administrative bodies. Present salary $11,000. Seeks growth opportunity with corporation. Box 8N-9.

TRIAL LAWYER, 35, BBA, LLB, 10 YEARS' general practice, heavy trial experience. Seeking firm connection Southern City. Box 8N-10.

ROBES

JUDICIAL ROBES CUSTOM TAILORED— **The best of their kind—satisfaction guaranteed** —Catalog J sent on request. BENTLEY & SIMON, INC., 7-9 West 36th St., New York 18, N. Y.

SHORTHAND AND STENOTYPE REPORTING

SAN FRANCISCO: HART & HART (SINCE 1927), official reporters (shorthand and machines); notaries; private deposition suite; statewide notary and reporting service. Chancery Building, 564 Market Street. References: local bench and bar.

TECHNICAL SERVICES AVAILABLE

CONSULTING BIOLOGISTS — POLLUTION Effects and Water Quality, fresh and saltwater Investigations, Reports, Court Testimony. Thomas Dolan, Charles B. Wurtz, Ph.D., 610 Commercial Trust Building, Philadelphia, Pennsylvania.

CHEMIST AND CHEMICAL ENGINEER — 25 years' experience — petroleum, gas, petrochemicals, foods, chemical processes. Consultation and court testimony. Russell G. Dressler, Ph.D., Consultant, 204 Carolwood Dr., San Antonio 13, Texas, DIamond 2-5456.

ECONOMIC, STATISTICAL, MARKETING Consultation and Research—Federal Trade Commission, antitrust, contract, tax cases. References on request. W. Halder Fisher & Associates, 1112-13th Street, Northwest, Washington 5, D.C. REpublic 7-7866.

CLARENCE S. BRUCE, TRAFFIC ACCIDENT Analyst — Reconstruction, Consultation, Expert testimony. Automotive Engineer, formerly with National Bureau of Standards, Washington, D.C. Box 7S-1.

Association Calendar

Annual Meetings

Greater Miami Beach Area, Florida	August 24-28, 1959
Washington, D. C.	August 29-September 2, 1960

Board of Governors Meeting

Spring Meeting, Washington, D. C.	May 17-19, 1959

Midyear Meeting, House of Delegates

Edgewater Beach Hotel, Chicago, Illinois	February 19-24, 1959
Board of Governors	February 20-21, 1959
Group Meetings	February 21-22, 1959
House of Delegates	February 23-24, 1959

Regional Meetings

Pittsburgh, Pennsylvania	March 11-13, 1959
Memphis, Tennessee	November 1- 4, 1959
Houston, Texas	November 9-12, 1960

LIFE and ADVENTURES of SAWYER the LAWYER

BEFORE ALR

I hunted by day and I hunted by night
Always in doubt my briefs were air-tight.

AFTER ALR

With cases all bagged; many triumphs in court;
I hunt now for fun and shout "Vive le sport!"

The TOTAL RESEARCH of *ALR 2d* 50 Series solved Sawyer's problems. It can solve yours, too.

An *ALR* annotation gathers, analyzes and classifies all cases on a point of law, including *your local cases.*

ALR ends "missing-case" worries, assures case-tight briefing and successful court action. This adds up to successful, client-rich practice.

Ask today about low cost, low terms for the new ALR *unit.*

ALR 2d SERIES

The Lawyers Co-operative Publishing Company
ROCHESTER 14, NEW YORK

Bancroft-Whitney Company
SAN FRANCISCO 1, CALIFORNIA